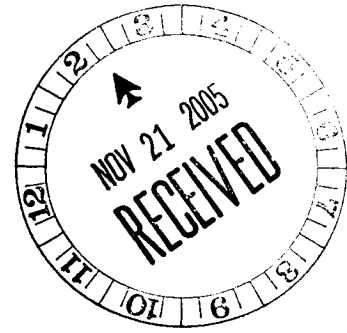


November 21, 2005



By Messenger

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

RE: Docket No. 33476, C&NC, L.L.C. – Acquisition Exemption – Indiana High-Rail Corporation; Docket No. 33475, C&NC Railroad Corporation – Lease and Operation Exemption – Lines of Norfolk and Western Railway Company and Indiana Hi Rail Corporation

Dear Secretary Williams:

Please find enclosed for filing the original and ten (10) copies of Reply to Petition of RMW Ventures LLC and C&NC Railroad Corporation for Expedited Confirmation and Correction Regarding Rail Common Carrier Service Rights to Integrity Metals, Inc. filed on behalf of Whitewater Valley Railroad, Inc. in the above referenced proceeding. Also enclosed is a compact disk with a copy of the Reply in pdf format.

Please note in the original and the copies, there is a color map in Exhibit 12.

An extra copy of this filing is enclosed for stamping and returning to our offices.

Should you have any questions regarding the foregoing, please do not hesitate to contact me.

Sincerely,

Karyn A. Booth
Jeffrey O. Moreno

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Public Record

Enclosures

Before the
SURFACE TRANSPORTATION BOARD



DOCKET NO. 33476 - 215174

C&NC, L.L.C. -- Acquisition Exemption -- Indiana High-Rail Corporation

DOCKET NO. 33475 - 215178

C&NC RAILROAD CORPORATION -- LEASE AND OPERATION EXEMPTION -- LINES
OF NORFOLK AND WESTERN RAILWAY COMPANY AND INDIANA HI RAIL
CORPORATION

**REPLY TO PETITION OF RMW VENTURES LLC AND C&NC RAILROAD
CORPORATION FOR EXPEDITED CONFIRMATION AND CORRECTION
REGARDING RAIL COMMON CARRIER SERVICE RIGHTS TO INTEGRITY
METALS, INC.**

ORIGINAL

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Railroad, Inc.*

November 21, 2005

STATEMENT OF FACTS

Whitewater Valley Railroad (hereinafter "Whitewater"), a non-profit corporation, is an operating railroad museum in southeast Indiana that runs passenger trains from Connersville, in Fayette County, eighteen miles south to Metamora, in Franklin County. Vaughan V.S. at 1; see also Exs. 12, 13. Metamora is a small tourist town that the State of Indiana has helped restore to the 1860s canal era. Vaughan V.S. at 1. To match the canal era setting, the trains Whitewater operates are historically significant diesel locomotives and open window coaches. Id. With the exception of a paid office manager, volunteers carry out Whitewater's operations. Id. Whitewater also conducts an annual "Santa Run" around the holiday season into Connersville. Id.

Whitewater began its operations in 1974 over track leased from Penn Central. Id. This track extended south from Connersville to Brookville, a city southeast of Metamora. Id.; see also Exs. 12, 13. Due to a major track washout later that same year, Whitewater was forced to cease operations over the southernmost line segment between Metamora and Brookville. Vaughan V.S. at 1. In 1983, Whitewater purchased the eighteen miles of track that it had been leasing from Penn Central between Connersville (at mile post 67.9) and Metamora (at mile post 50). Id. at 1-2. The status of this track is not at issue in this proceeding.

In 1989, Whitewater purchased an additional 1.1 miles of track from Indiana Hi-Rail Corporation, which is the same track that is the subject of this proceeding. See Ex. 2. This section of track, located in downtown Connersville, extended from mile post 69.0 to mile post 67.9 (hereinafter the "Connersville Segment" or the "Segment"). Id. at 1. No stations were located along the track at the time of the sale. Vaughan V.S. at 2. The Sale Agreement is attached as Exhibit 2. Neither Indiana Hi-Rail nor Whitewater submitted the proposed sale of the Segment to the Interstate Commerce Commission ("ICC") for approval. Id. at 2.

Indiana Hi-Rail originally purchased the Connersville Segment from Consolidated Rail Corporation (hereinafter "Conrail") in 1981 as part of a larger purchase of a six-mile line running north from Connersville to Beesons, Indiana. Indiana Hi-Rail Corp.—Exemption from 49 U.S.C. Subtitle IV, 1986 ICC LEXIS 367, at *5 (Apr. 1, 1986). Prior to purchasing the six-mile line, Indiana Hi-Rail applied to the ICC seeking authorization to force the sale of the line under the Feeder Railroad Development Program created by the Staggers Rail Act of 1980. See Indiana Hi-Rail Corp.—Feeder Line Acquisition—Conrail Line Between Beesons and Connersville, IN, 366 I.C.C. 42, 42-43 (1981). The ICC approved the application, determining that the line was a potential abandonment candidate, as required by the statute. Id. at 43-44. At the time of the acquisition, Indiana Hi-Rail elected, pursuant to former 49 U.S.C. § 10910(g)(1) (currently codified at 49 U.S.C. § 10907(g)(1)), to be exempt from all provisions of Title 49 of the United States Code (except for those addressing joint rates, from which no exemption was permitted), with respect to its operations over the six-mile line. Black v. I.C.C., 762 F.2d 106, 108-09 (D.C. Cir. 1985).

In its initial offer to sell the Connersville Segment, Indiana Hi-Rail stated that "IHRC has been exempted from Interstate Commerce Commission jurisdiction covering abandonment of the portion of track south of MP 69," and that "[t]he new operator need not become a common carrier. Instead, they may wish to be a private carrier" Ex. 9 at 2. Consistent with this representation, Indiana Hi-Rail also stated that it was "permitted to dispose of the trackage without further regulatory delay," id., and that "[i]f no firm purchase offer is made and accepted . . . , then IHRC will proceed with the salvage of the track materials. Once salvage has commenced, the process is for all practical purposes, irreversible," id. at 3. In later letters, Indiana Hi-Rail stated that if no reply were received from Whitewater by the specified dates, it

would assume that its sale offer was rejected and would "thereupon proceed with dismantling plans," Ex. 10 at 2, and "retirement plans," Ex. 11.

Whitewater, thus, understood that it would acquire an extension of rail line for its tourist operations that either was exempt or abandoned. See Vaughn V.S. at 2. In either case, the line would be conveyed to Whitewater without a common carrier obligation.

Although Whitewater had no intention or desire to purchase a rail line vested with a common carrier obligation, it was willing to accommodate the sole freight shipper on the Segment, Cohen Brothers (now known as "Integrity Metals"), as a private carrier. Vaughn V.S. at 2. Following its purchase of the Connersville Segment, Whitewater entered into a switching agreement with Indiana Hi-Rail (hereinafter "Switching Agreement"), Ex. 3, in which Whitewater agreed to switch cars over its private line from Cohen Brothers to Indiana Hi-Rail, Vaughn V.S. at 2-3; see also Ex. 12. On March 18, 1993, however, Whitewater terminated the Switching Agreement, in accordance with its terms, by giving 90 days' advance notice to Indiana Hi-Rail. See Ex. 7.

Subsequently, on June 2, 1993, Whitewater and Indiana Hi-Rail entered into a trackage rights agreement (hereinafter "Trackage Rights Agreement") that allowed Indiana Hi-Rail to operate directly over the Connersville Segment to serve Cohen Brothers. See Ex. 4. In 1995, Whitewater extended the Trackage Rights Agreement through December 31, 1997. See Ex. 5. In December 1997, the trustee in bankruptcy for Indiana Hi-Rail assigned all rights, duties, and obligations contained in the Trackage Rights Agreement to C&NC. See Ex. 6. The Trackage Rights Agreement expired according to its terms later that same month, on December 31, 1997. Vaughn V.S. at 3.

Since then, Whitewater has not entered into any new trackage rights agreement. Id. Following expiration of the Trackage Rights Agreement, however, Whitewater gave verbal consent for C&NC to enter onto the Connersville Segment to switch freight carloads on a sporadic basis during the months of December 1998, and January, March, and April 1999. Id. Since April 1999, Whitewater has not permitted any freight operations over the Connersville Segment. Id.

The current dispute arose when C&NC recently requested renewed access over the Connersville Segment to serve Integrity Metals (formerly Cohen Brothers). Id. When Whitewater did not immediately agree to C&NC's request, C&NC asserted both a right and a duty to provide common carrier service over the Connersville Segment. Id. at 3-4. While Whitewater disagreed strongly that there is any common carrier obligation currently attached to the Segment for the reasons presented herein, it did not summarily reject C&NC's request. Id. at 4.

Rather, Whitewater expressed concern about the additional costs and liabilities that it would incur and the impact of C&NC's operations upon Whitewater's regulatory status with the Federal Railroad Administration ("FRA"). Id. These costs were a significant factor in Whitewater's decision not to allow freight movements since 1999. Id. at 3. As a non-profit entity, these costs to Whitewater of C&NC's operations on the Connersville Segment continue to be a significant concern. Id. at 4.

C&NC has made only minimal efforts to address Whitewater's concerns. Id. at 5. While C&NC claims that Integrity Metals has offered to ship a "significant" amount of traffic by rail on a regular monthly basis, it has not defined "significant." Id. at 5. This makes it very difficult for Whitewater to assess the impact of this traffic on its operations. Id. Despite this "significant"

increase in traffic, C&NC has proposed that it enter into the same trackage rights agreement that expired in December 1997 for the same rate compensation of \$1500 per year plus ten dollars per car load. See Ex. 16 at art. 3.

In addition, Whitewater is concerned with C&NC's ability to indemnify Whitewater for accidents and injuries that might occur on the Connersville Segment, especially C&NC's ability to cover its insurance deductible. Vaughan V.S. at 5. This concern is based on actual experience with C&NC in 2001, when three high-cube boxcars escaped from a C&NC switching crew, traveled 1.25 miles onto Whitewater's track across 12 grade crossings, and collided with a locomotive and caboose in Whitewater's yard causing heavy damage. Id. However, because Whitewater's damages were less than C&NC's insurance deductible, C&NC refused to compensate Whitewater. Id. Only after Whitewater's own insurance company stepped in, did Whitewater ultimately recover its damages a few years later. Id. Whitewater has no desire to increase its exposure to liability from C&NC's irresponsible actions by allowing C&NC to operate directly over Whitewater track on a regular basis.

Finally, C&NC's operation over the Connersville Segment would subject Whitewater to numerous FRA regulations that currently are not applicable. Based on the fact that Whitewater's line, including the Connersville Segment, is used only for passenger tourist excursions, the FRA recently determined that Whitewater is a "non-insular" railroad that is not part of the general railroad system. Ex. 8. Therefore, Whitewater is currently not subject to FRA regulations addressing track safety standards, drug testing, passenger equipment safety, and passenger train emergency preparedness.¹ However, the FRA has informed Whitewater that, if C&NC were to operate over the Connersville Segment, Whitewater's status would change, requiring it either to

cease its tourist operations completely over the Segment or to comply with the many FRA regulations from which Whitewater is currently exempt. Vaughan V.S. at 4.

Because of the financial costs of compliance with these additional FRA regulations, Whitewater, a non-profit corporation, has concluded that it most likely would be forced to stop operating over the Connersville Segment. Id. Since Whitewater originates passenger trains from a recently constructed depot on the Segment, it would have to abandon that depot, which also serves as its headquarters. Id. at 4.

Although the FRA has procedures for requesting waivers, there are substantial costs associated with making these requests,² of which C&NC has offered only to incur a small part even though it would be the sole beneficiary. See Ex. 17 at 1. Furthermore, Whitewater contacted Alan Halstrom, the FRA Chief Inspector, to obtain his opinion on the probability of obtaining the necessary waivers. Vaughan V.S. at 5. He stated that Whitewater would have to file separate petitions for each waiver request and that Whitewater is unlikely to qualify for most of the waivers on a wholesale basis.³ Id. He also stated that the process to obtain all the waivers

¹ The applicable statutes and regulations from which Whitewater is currently excluded are: 49 U.S.C. §§ 20102, 20301-20303, 20502-20505, 20902, 21302, and 21304 (2005), as well as 49 C.F.R. Parts 171-179, 209-211, 215, 216, 225, 230, 234, and 245 (2004). See 49 C.F.R. pt. 209 (app. A) at 42.

² FRA regulations permit tourist railroads to apply for waivers of some of the FRA regulations which would apply should the Board permit C&NC access to the Segment. See 49 C.F.R. § 211.9. However, the mere application process itself would require Whitewater to incur additional legal expenses for filing and a possible hearing on the petition, see 49 C.F.R. §§ 211.41(b), 211.43(b) (providing that the FRA may require a hearing on the application), as well as expenses related to the accumulation of relevant data, see 49 C.F.R. § 211.9(c) (requiring, as part of any waiver application, an estimate of resulting costs to the private sector, to consumers, and to Federal, State, and local governments, as well as a quantified estimate of resulting benefits). A waiver petition relating to safety regulations must also present "relevant safety data." Id.

³ The initial offer letter from Indiana Hi-Rail to Whitewater in 1989 noted that the Segment had twelve grade crossings which exposed Indiana Hi-Rail to "serious liability," including one crossing that had, up to that point, been the subject of four separate lawsuits. See Ex. 9 at 1. The segment at issue is located in the heart of Connersville. See Ex. 12. Further, C&NC's safety record is marked by an incident on February 24, 2001, when C&NC lost control of three high-cube box cars, with the subsequent chase down the track leading to an accident involving an automobile at a street crossing. Vaughan V.S. at 5-6.

would likely take years. Id. Thus, an FRA waiver is not the panacea that C&NC has attempted to represent to Whitewater.

When Whitewater did not immediately accept C&NC's terms for a new trackage rights agreement, C&NC initiated this proceeding. Id. at 4. It is apparent that, while C&NC wants the revenue from serving Integrity Metals, it wants Whitewater to bear much of the cost. By pursuing this action, C&NC hopes the STB will grant it a free ride, by directing Whitewater to allow C&NC to operate over the Connersville Segment. It is unclear whether C&NC believes it would owe Whitewater any compensation for those rights, and if so, how much. At bottom, C&NC really wants the Board to dictate the commercial agreement with Whitewater that C&NC was unable to negotiate.

ARGUMENT

C&NC's petition posits, without any supporting evidence, that Indiana Hi-Rail retained a common carrier obligation over the Connersville Segment when it sold the Segment to Whitewater. Therefore, C&NC contends that, as the successor-in-interest to Indiana Hi-Rail, it now possesses a common carrier obligation over this line. C&NC presents no evidence that Indiana Hi-Rail and Whitewater intended to separate the common carrier obligation from the ownership of the rail assets, and it ignores compelling facts that no common carrier obligation even attached to the Connersville Segment at the time of the sale to Whitewater.

As the following discussion explains, C&NC's assertions in relation to the common carrier obligation are erroneous. At the time of the Sale Agreement in 1989, no common carrier obligation attached to the Connersville Segment because it was exempt track under both the Feeder Railroad Development Program and 49 U.S.C. § 10907 (1989). Furthermore, Indiana Hi-Rail did not retain any residual common carrier obligations following the 1989 sale of the Segment to Whitewater Valley that could be conveyed to C&NC.

I. AT THE TIME OF THE 1989 SALE TO WHITEWATER, NO COMMON CARRIER OBLIGATION ATTACHED TO THE CONNERSVILLE SEGMENT.

When Whitewater purchased the Connersville Segment through the 1989 Sale Agreement the Segment was exempt from Title 49 of the U.S. Code. In a prior decision, the ICC held that Indiana Hi-Rail had no common carrier obligation in relation to the Connersville Segment because Indiana Hi-Rail had lawfully elected to be exempt from Title 49, pursuant to 49 U.S.C. § 10910(g)(1) (currently codified at 49 U.S.C. § 10907(g)(1)), when it purchased the Segment as part of the Feeder Railroad Development Program. In addition, the Segment also constituted exempt industrial lead track under 49 U.S.C. § 10906 (previously codified at 49 U.S.C. § 10907). Indiana Hi-Rail confirmed the exempt status of the Connersville Segment to Whitewater, at the time of the Sale Agreement, when it declared that Whitewater need not become a common carrier in relation to the Segment.

A. No Common Carrier Obligation Attached To The Connersville Segment Because Indiana Hi-Rail Elected To Be Exempt from Title 49, U.S.C., When It Purchased The Segment In 1981.

Indiana Hi-Rail assumed no common carrier obligation in relation to the Connersville Segment when it purchased the line from Conrail in 1981. In the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (1980), Congress created the Feeder Railroad Development Program. See id. at § 401. Pursuant to section 401(a) of the Staggers Act, any person operating a railroad line acquired under the Program could elect to exempt itself from any of the provisions of Title 49 of the United States Code (except provisions relating to charging joint rates). See 49 U.S.C. § 10910(g)(1) (1981) (currently codified at 49 U.S.C. § 10907(g)(1) (2005)).

In December 1981, Indiana Hi-Rail purchased the Segment as part of a larger transaction to acquire a six-mile line between Beesons, Indiana and Connersville from Conrail. See Indiana Hi-Rail Corp.—Exemption from 49 U.S.C. Subtitle IV, 1986 ICC LEXIS 367, at *5. Indiana Hi-

Rail submitted an application to the ICC, pursuant to the Feeder Railroad Development Program, in order to force Conrail to sell this six-mile line segment. See Indiana Hi-Rail Corp.—Feeder Line Acquisition—Conrail Line Between Beesons and Connersville, IN, 366 I.C.C. at 43 (1981). The ICC approved the application, concluding that the line was eligible for sale under the Program. See id. at 43-44. As part of the transaction, Indiana Hi-Rail elected to be exempt from Title 49 with respect to its service over the six-mile line segment. Black, 762 F.2d at 108-09. Indiana Hi-Rail's exempt status over this line segment was confirmed by the U.S. Court of Appeals for the District of Columbia Circuit, which adopted the ICC's position that, although Indiana Hi-Rail became a common carrier when it acquired a second line between New Castle and Rushville, Indiana, its operations over the Beesons to Connersville line segment remained exempt. See id. at 116; see also Indiana Hi-Rail Corp.—Exemption from 49 U.S.C. Subtitle IV, 1986 ICC LEXIS 367, at *7 ("IHR is a carrier subject to the Commission's jurisdiction with respect to the rail service it performs *on its second line*" (emphasis added)).

Thus, because it elected to be exempt from Title 49, Indiana Hi-Rail did not have a common carrier obligation with respect to the Connersville Segment. As a result, there was no common carrier obligation for Indiana Hi-Rail to retain after the 1989 sale to Whitewater, and thus no common carrier obligation for Indiana Hi-Rail to convey to C&NC. The Connersville Segment, therefore, remains exempt track to which no common carrier service obligation applies. Any freight rail service provided since that time has been purely private service.⁴

⁴ Even C&NC has concluded that Whitewater can only have provided private freight service over the Segment to Integrity Metals. See Ex. 14 at 2 ("Since WWVR did not hold itself out to the public to provide freight rail transportation service but only contracted to provide this service as an agent for IHRC, WWVR was not a railroad common carrier, but rather was a private carrier.").

B. Indiana Hi-Rail Could and Did Abandon The Connersville Segment, Without ICC Authority, When It Conveyed The Line To Whitewater.

Because Indiana Hi-Rail elected to be exempt from Title 49 when it originally acquired the Connersville Segment, it was exempt from the ICC's abandonment procedures. Thus, Indiana Hi-Rail could abandon the line without any regulatory approval. The facts in this case suggest that is precisely what Indiana Hi-Rail did.⁵

During negotiations with Whitewater, Indiana Hi-Rail represented that "IHRC has been exempted from Interstate Commerce Commission jurisdiction covering abandonment of the portion of track south of MP 69" and that "[t]he new operator need not become a common carrier. Instead, they may wish to be a private carrier" Ex. 9 at 2. Thus, Indiana Hi-Rail was fully prepared to convey the Connersville Segment to Whitewater without a common carrier obligation. Since Whitewater, as a tourist railroad, had no desire to assume a common carrier obligation, see Vaughan V.S. at 2, it is reasonable to conclude that no such obligation was conveyed to it, a fact to which C&NC and Whitewater agree.⁶

Furthermore, the facts indicate that Indiana Hi-Rail had no intent or desire to retain a common carrier obligation over the Connersville Segment for itself (assuming it had one in the first place). Indeed, Indiana Hi-Rail was fully prepared to salvage the track immediately if it could not find a buyer. For example, Indiana Hi-Rail declared that it was "permitted to dispose of the trackage without further regulatory delay." Ex. 9 at 2. It concluded its initial offer letter by stating that "[i]f no firm purchase offer is made and accepted . . . , then IHRC will proceed with the salvage of the track materials. Once salvage has commenced, the process is for all

⁵ In addition, the Connersville Segment was exempt track under 49 U.S.C. § 10906 (previously codified at § 10907). Even C&NC does not dispute this fact. See Ex. 14 at 2 ("Neither the sale by IHRC of this line segment to WWVR or WWVR's operation of this line under the switching agreement required STB approval because the track was exempt under 49 U.S.C. § 10907."). Therefore, this exemption also allowed Indiana Hi-Rail to abandon the Connersville Segment without ICC approval.

⁶ See supra note 4.

practical purposes, irreversible." Id. at 3. In subsequent correspondence, Indiana Hi-Rail stated that if no reply were received from Whitewater by the specified dates, Indiana Hi-Rail would assume that its sale offer was rejected and would "thereupon proceed with dismantling plans," Ex. 10 at 2, and "retirement plans," Ex. 11. These statements make it abundantly clear that Indiana Hi-Rail did not retain a common carrier obligation upon sale of the Connersville Segment to Whitewater.

This combination of Whitewater's desire not to incur a common carrier obligation and Indiana Hi-Rail's desire not to retain one can only lead to the conclusion that Indiana Hi-Rail abandoned the Connersville Segment when it conveyed the line to Whitewater. If Indiana Hi-Rail possessed a common carrier obligation over the Connersville Segment at the time of the 1989 sale to Whitewater, as C&NC contends, the only way that both Indiana Hi-Rail and Whitewater could avoid that obligation would be through abandonment of the line. The exempt status of the Segment made abandonment possible at the sole discretion of Indiana Hi-Rail and without requiring any formal action by Indiana Hi-Rail. Thus, if the Board concludes that Indiana Hi-Rail even possessed a common carrier obligation over the Connersville Segment in the first place, it should also conclude that the obligation was extinguished by abandonment when Indiana Hi-Rail sold the Segment to Whitewater.

II. INDIANA HI-RAIL DID NOT RETAIN A COMMON CARRIER OBLIGATION OVER THE CONNERSVILLE SEGMENT, AFTER THE 1989 SALE TO WHITEWATER, THAT COULD HAVE BEEN TRANSFERRED TO C&NC.

C&NC freely acknowledges that Whitewater did not acquire a common carrier obligation when it purchased the Connersville Segment from Indiana Hi-Rail.⁷ Therefore, in order for a common carrier obligation to attach to the Connersville Segment, Indiana Hi-Rail and Whitewater would have to have agreed to separate the obligation from ownership of the rail

assets and underlying real estate. That agreement also would have to satisfy certain requirements. C&NC cannot point to any bifurcation agreement, much less any set of facts that would satisfy the bifurcation prerequisites. Moreover, as demonstrated in the previous section, Indiana Hi-Rail clearly had no intention or desire to retain any common carrier obligation.

A seller of the fixed assets and right-of-way of a railroad line may retain a residual common carrier obligation in relation to that line, along with the attendant access rights, provided that the transfer meets certain conditions. See State of Maine—Dept. of Transp.—Acquisition and Operation Exemption, 8 I.C.C.2d 835, 836-37 (1991) (hereinafter State of Maine).⁸ Foremost among these conditions is the requirement that the seller, by virtue of the sale agreement, explicitly and specifically retain a permanent and unconditional freight service easement over the line. See, e.g., Norfolk & Western Ry. Co.—Petition for Declaratory Order, 9 I.C.C.2d 1155, 1156 (1993) (noting that analysis of whether a common carrier obligation is transferred includes determining whether seller retained a permanent and unconditional easement); Metropolitan Transit Authority of Harris Co., TX—Petition for Declaratory Order 9 I.C.C.2d 559, 562-63 (1993) (holding that purchase and sale agreement indicates that seller retained permanent and unconditional freight operations easements reflecting property rights sufficient to enable seller to fulfill common carrier obligations without interference from buyer); Southern Pacific Transp. Co.—Abandonment Exemption, 8 I.C.C.2d 495, 508 (1992) (noting that residual common carrier obligation test is whether terms of sale agreement place so many

⁷ See supra note 4.

⁸ In State of Maine, the ICC stated that from that point forward, parties should submit for ICC approval all proposed sales where the parties intended a divestment of the physical assets of a line with simultaneous retention of a residual common carrier obligation. 8 I.C.C.2d at 838. Here, because the sale took place almost a year and a half before the ICC published the State of Maine decision, even if the parties had intended such a bifurcated divestment (which they did not), they would not have been on notice to submit their proposed transaction to the Commission for approval. Cf. City of Venice—Abandonment Exemption, STB Docket No. AB-863X, at *6 (June 22, 2004) (holding that it would be "anomalous" to require a purchasing party to follow the State of Maine submission

restrictions on seller's ability to continue to provide freight service that seller's rights cannot be characterized as "unconditional and permanent"); State of Maine, 8 I.C.C.2d at 835-36 (noting that seller's permanent easement ensures seller access and right to maintain, operate, and renew the line). Cf. Wisconsin Dept. of Transp.—Petition for Declaratory Order, Finance Docket No. 34623 at *2-3 (Dec. 23, 2004) (holding that exclusive perpetual freight easement transfers common carrier obligation from seller to third-party railroad when physical assets and right-of-way transferred to public agency buyer).

In addition to retention of a permanent freight service easement, other considerations for determining whether a seller retains a common carrier obligation following the sale of a line include: (1) whether the buyer can force the seller to discontinue or abandon freight service; (2) which party controls maintenance of the line; (3) which party exercises dispatching control; and (4) the extensiveness of restrictions on the seller's freight service. See Orange Co. Transp. Authority—Acquisition Exemption—Atchison, Topeka, & Santa Fe Ry. Co., 10 I.C.C.2d 78, 83-84 (1994); see also Los Angeles Co. Transp. Comm'n—Petition for Exemption, Finance Docket No. 32374, 1996 STB LEXIS 205 at *6 (July 11, 1996); Chicago Terminal Corp.—Acquisition of Leasehold Exemption—Elgin, Joliet & Eastern Ry. Co., Finance Docket No. 32495, 1994 ICC LEXIS 293 at *8 (Dec. 22, 1994).

Here, the facts demonstrate that Indiana Hi-Rail did not retain a residual common carrier obligation over the Connersville Segment after the sale to Whitewater.

First and foremost, Indiana Hi-Rail retained no permanent and unconditional freight service easement over the Segment at issue and no such easements have been recorded in the Fayette County land records. Vaughan V.S. at 2. The 1989 Sale Agreement makes no reference

procedure in a pre-1991 transaction). Nevertheless, any bifurcation of the common carrier obligation between Indiana Hi-Rail and Whitewater still would have to satisfy the conditions for an effective bifurcation.

whatsoever to any easements to be retained by Indiana Hi-Rail. See Ex. 2. Rather, the agreement provides: "Seller warrants it has full authority to sell the property described, and that said property shall be sold free and clear of all liens, encumbrances, and claims." Id. at 1. The terms also explicitly transfer all existing easements to Whitewater Valley: "Seller agrees to sell, and Buyer agrees to buy . . . All of the part of Seller's rail line segment between M.P. 69.0 and M.P. 67.9 . . . including: right-of-way, track structure, culverts, bridges, crossings, *easements*, signals and real estate." Id. (emphasis added). Indeed, from the date of the 1989 Sale Agreement until the parties entered into a Trackage Rights Agreement dated June 2, 1993, Indiana Hi-Rail did not possess any rights at all to operate over the Connersville Segment. Rather, Whitewater switched freight cars to a set-off track, pursuant to a voluntary Switching Agreement. Vaughan V.S. at 2.

Furthermore, all four of the other considerations the Board has identified as central to the determination of whether a residual common carrier obligation exists also militate against Indiana Hi-Rail's retention of a residual common carrier obligation following the 1989 sale. The terms of the Switching Agreement permitted either party to terminate the Agreement on 60 days' notice. See Ex. 3 at art. 19. In fact, Whitewater did just that on March 18, 1993, when it provided the required notice that Indiana Hi-Rail should cease all car movements on Whitewater property. See Ex. 7. The subsequent Trackage Rights Agreement had a fixed termination date of December 31, 1995, see Ex. 4 at art. 5, which the parties later agreed to extend through December 31, 1997, see Ex. 5, after which Whitewater refused to enter into subsequent renewals. Vaughan V.S. at 3. Thus, Whitewater was always in a position to force Indiana Hi-Rail to abandon or discontinue freight service on the Connersville Segment.

Since Indiana Hi-Rail did not possess any operating rights over the Segment in the Switching Agreement, Whitewater's control and ownership during the effective dates of that agreement cannot be in dispute. This fact, alone, is sufficient to prove that Indiana Hi-Rail did not satisfy the necessary requirements for retaining a residual common carrier obligation.

The subsequent Trackage Rights Agreement explicitly recognizes Whitewater as the "owner and operator" of the Segment. Ex. 4 at 1. It also assigned maintenance of the Segment to Whitewater. See Ex. 4 at art. 2(a). In addition, Whitewater retained the obligation to repair and restore the track should the rail line become unfit or unsafe for operations during the term of the Agreement. See id. at art. 2(b). Furthermore, Whitewater directed Indiana Hi-Rail not to interfere with Whitewater's operations over the Segment. See Ex. 4 at art. 4.

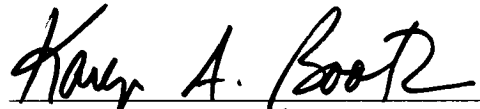
As the terms of the Sale Agreement, Switching Agreement, and Trackage Rights Agreement reflect, Indiana Hi-Rail could not have retained any residual common carrier obligation following the sale to Whitewater. Indiana Hi-Rail retained no easement at all under the terms of the 1989 Sale Agreement, much less one that was permanent and unconditional. General maintenance obligations relating to the Segment fell to Whitewater at all times. Whitewater retained dispatching control under the terms of the Switching and Trackage Rights Agreements; imposed time restrictions on Indiana Hi-Rail's use of the track for freight shipments; and retained the right to impose more restrictive controls over freight operations if necessary. Whitewater forced Indiana Hi-Rail to abandon service in 1993 and repeated its action in 1998 when it declined to enter into a new trackage rights agreement with C&NC, Indiana Hi-Rail's successor in interest. Thus, Whitewater maintained sufficient control over the Segment to dispel any contention that Indiana Hi-Rail retained a residual common carrier obligation. As a result, no residual common carrier obligation transferred to C&NC following assignment of

Indiana Hi-Rail's rights, duties, and obligations to C&NC in 1997, and so C&NC presently has no common carrier obligation to service any shippers located along the Segment. Thus, C&NC has no right to operate over the Connersville Segment.

CONCLUSION

The Board should deny C&NC's petition for access rights to provide freight service to Integrity Metals. At the time of the Sale Agreement in 1989, no common carrier obligation attached to the Connersville Segment because it was exempt track under both the Feeder Railroad Development Program and 49 U.S.C. § 10907 (1989). Indiana Hi-Rail did not retain any residual common carrier obligations following the 1989 sale of the Segment to Whitewater Valley that could be conveyed to C&NC. Because C&NC has no residual common carrier obligation to provide freight service to Integrity Metals, it also lacks the attendant right to access over Whitewater's property, which has been in Whitewater's possession "free and clear" of any claims or easements since the execution of the 1989 Sale Agreement.

Respectfully submitted,

A handwritten signature in black ink, reading "Karyn A. Booth". The signature is written in a cursive, flowing style. The first name "Karyn" is written with a large, stylized "K". The middle initial "A." is written in a smaller, simpler script. The last name "Booth" is written with a large, stylized "B" and a long, sweeping tail that extends to the right.

Karyn A. Booth, Esq.

Jeffrey O. Moreno, Esq.

THOMPSON HINE LLP

1920 N Street, N.W., Suite 800

Washington, D.C. 20036

(202) 331-8800

*Attorneys for Respondent Whitewater
Valley Railroad, Inc.*

November 21, 2005

CERTIFICATE OF SERVICE

I hereby certify that this 21st day of November, 2005, I served a copy of the foregoing Reply to Petition of RMW Ventures LLC and C&NC Railroad Corporation for Expedited Confirmation and Correction Regarding Rail Common Carrier Service Rights to Integrity Metals, Inc., by overnight mail to the following address:

Richard R. Wilson, P.C.
A Professional Corporation
127 Lexington Avenue, Suite 100
Altoona, PA 16601

A handwritten signature in black ink, appearing to read 'Aimee L. DePew', written over a horizontal line.

Aimee L. DePew

TABLE OF ATTACHED EXHIBITS

Exhibit 1: Verified Statement of Emmett Vaughan, Whitewater Valley Railroad Corporation.

Exhibit 2: Track Sale Agreement between Indiana Hi-Rail Corporation and Whitewater Valley Railroad Corporation dated December 13, 1989.

Exhibit 3: Switching Agreement between Indiana Hi-Rail Corporation and Whitewater Valley Railroad Corporation dated June 17, 1990.

Exhibit 4: Trackage Rights Agreement between Indiana Hi-Rail Corporation and Whitewater Valley Railroad Corporation dated June 2, 1993.

Exhibit 5: Trackage Rights Extension Agreement between Indiana Hi-Rail Corporation and Whitewater Valley Railroad Corporation dated June 20, 1995.

Exhibit 6: Assignment Agreement between Indiana Hi-Rail Corporation and C&NC Associated Investors, Inc. dated December 8, 1997.

Exhibit 7: Letter from Laurence A. Shiplett, General Manager, Whitewater Valley Railroad Corporation, to Tim Yeager, Sales Manager, Indiana Hi-Rail Corporation, dated March 18, 1993.

Exhibit 8: Letter from Laurence H. Hasvold, Regional Administrator, Federal Railroad Administration, to John Hillman, President, Whitewater Valley Railroad Corporation, dated December 12, 2002.

Exhibit 9: Letter from R. Powell Felix, President, Indiana Hi-Rail Corporation, to Robert Gold, General Manager, Whitewater Valley Railroad Corporation, dated September 25, 1989.

Exhibit 10: Letter from R. Powell Felix, President, Indiana Hi-Rail Corporation, to Robert Gold, General Manager, Whitewater Valley Railroad Corporation, dated October 16, 1989.

Exhibit 11: Letter from David L. Smoot, Executive Vice President, Indiana Hi-Rail Corporation, to Robert Gold, General Manager, Whitewater Valley Railroad Corporation, dated October 31, 1989.

Exhibit 12: Color Map of Connersville, Indiana Railroad Lines.

Exhibit 13: Indiana Department of Transportation Rail System Map (with focused map of Fayette County and surrounding counties).

Exhibit 14: Memorandum from Richard R. Wilson, Esquire, to Spencer N. Wendelin dated October 12, 2005.

Exhibit 15: Amendment No. 1 to Trackage Rights Agreement between Indiana Hi-Rail Corporation and Whitewater Valley Railroad Corporation dated December 29, 1995.

Exhibit 16: Proposed Trackage Rights Agreement Offered by C&NC

Exhibit 17: Letter from Richard R. Wilson, Esquire, to Karyn Booth, Esquire, dated October 20, 2005.

EXHIBIT 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NOS. 33475 AND 33476

**REPLY TO PETITION OF RMW VENTURES LLC AND C&NC RAILROAD
CORPORATION**

VERIFIED STATEMENT OF EMMETT A. VAUGHAN

I am Emmett A. Vaughan, Chairman of the Board of Directors of the Whitewater Valley Railroad Corporation.

Whitewater Valley Railroad is a non-profit corporation whose sole railroad operations consist of an operating railroad museum. With the exception of a paid office manager, volunteers carry out Whitewater's operations. Whitewater is based in Connersville, Indiana, a city located in Fayette County, and runs tourist passenger trains from Connersville eighteen miles south to the town of Metamora, in Franklin County, Indiana. Metamora is a small tourist town that the State of Indiana has helped restore to the 1860s canal era. To match the canal era setting, the trains that Whitewater operates are historically significant diesel locomotives and open window passenger coaches. Additionally, Whitewater also conducts an annual "Santa Run" around the holiday season into Connersville.

Whitewater began its operations in 1974 over track that it leased from Penn Central. This stretch of track extended from Connersville south to Brookville, a city southeast of Metamora. After suffering a major track washout that same year, Penn Central failed to replace a portion of the line between Metamora and Brookville and, as a result, Whitewater was forced to cease operations over the southernmost segment of the line. In 1983, Whitewater purchased the

remaining eighteen miles of track between Connersville and Metamora that it had been leasing from Penn Central up to that point. These eighteen miles run from mile post 67.9 in Connersville to mile post 50.0 in Metamora.

In 1989, Whitewater purchased a 1.1-mile segment of track immediately north of its existing holdings in Connersville from Indiana Hi-Rail. No depots or stations were located along the track at the time of the sale. Because Indiana Hi-Rail told Whitewater in its negotiation letters that the 1.1-mile segment was exempt from Interstate Commerce Commission jurisdiction, neither Indiana Hi-Rail nor Whitewater ever submitted the proposed sale of the segment to the Interstate Commerce Commission for approval. Indiana Hi-Rail also stated that it would pull up the track if Whitewater failed to purchase the line and that there was not sufficient freight business on the line to justify the continued costs of maintenance and potential liability. No railroad easements over the segment have been recorded in the Fayette County land records.

At no time did Whitewater have any intention or desire to undertake a common carrier obligation in connection with the purchase of the 1.1-mile segment. However, because there was one remaining potential freight shipper located on the segment—Cohen Brothers Metals (now reorganized and renamed as Integrity Metals)—Whitewater attempted to accommodate the freight shipping needs that Cohen Brothers might have. To further these ends, following the purchase of the segment, Whitewater entered into a switching agreement with Indiana Hi-Rail in 1990. Under this agreement, Whitewater agreed to switch freight cars on a set-off track and move them over the segment so as to serve as an intermediary between Cohen Brothers and Indiana Hi-Rail—whose line after Whitewater's purchase of the 1.1-mile segment began at the northern end of the segment. At no time during this period did Indiana Hi-Rail directly access the 1.1-mile segment to provide freight service to Cohen Brothers Metals.

Whitewater gave notice that it was invoking its right to cancel the switching agreement in March 1993 after it and Indiana Hi-Rail failed to agree on the terms of a trackage rights agreement. A few months later, however, Indiana Hi-Rail and Whitewater were able to agree on the terms of a trackage rights agreement, which both parties signed on June 2, 1993. Under the terms of the original trackage rights agreement, the agreement was to expire on December 31, 1995. On June 20, 1995, however, Whitewater and Indiana Hi-Rail entered into an agreement that extended the trackage rights agreement until December 31, 1997 in exchange for Indiana Hi-Rail allowing Whitewater personnel to attend engineer certification training classes required by the Federal Railroad Administration. Whitewater continued to allow Indiana Hi-Rail access over the 1.1-mile segment so that it could serve Cohn Brothers Metals under the terms of the trackage rights agreement until the agreement expired, according to its terms, on December 31, 1997.

Just a few weeks before the trackage rights expired, Indiana Hi-Rail assigned its rights under the agreement to C&NC. After the expiration of the agreement at the end of 1997, however, Whitewater did not enter into a new trackage rights agreement with C&NC. In December 1998 and January, March, and April 1999, Whitewater's president gave verbal consent for C&NC to enter onto the 1.1-mile segment in order to provide freight service to Cohen Brothers Metals on a sporadic basis. The last time C&NC provided such service was in April 1999. Whitewater did not allow C&NC access to the segment after that point because of concerns that such access would require Whitewater to comply with a myriad of Federal Railroad Administration regulations from which it was otherwise exempt as a tourist railroad.

The dispute which is the subject of C&NC's petition began when C&NC again requested access over the 1.1-mile segment in order to serve Integrity Metals. When Whitewater did not immediately agree to C&NC's request, C&NC asserted that it had both a right and a duty to

provide common carrier service to Integrity Metals over Whitewater's property. Whitewater disagrees that C&NC had or has any common carrier obligation to provide freight service over the track, but, even so, Whitewater did not immediately reject C&NC's request. However, when Whitewater did not immediately accept the terms in a trackage rights agreement proposed by C&NC, C&NC initiated this proceeding.

Whitewater has a number of concerns about the additional costs and liabilities it could incur if it allows C&NC access to Integrity Metals over Whitewater's track. The most important concern is the potential impact allowing such access would have upon Whitewater's current classification with the Federal Railroad Administration. I contacted Alan Halstrom, the Chief Inspector for the Federal Railroad Administration, who told me that, under its current classification as a non-insular railroad that is not part of the general railroad system, if Whitewater allows C&NC access to Whitewater's tracks, he may have to force Whitewater to cease all operations over the 1.1-mile segment. The only alternative, Mr. Halstrom stated, would be for Whitewater's regulatory status to change, forcing it to comply with numerous FRA regulations from which it is currently exempt. Whitewater has concluded that, being a non-profit corporation lacking many financial resources, it would most likely have to stop operating over the 1.1-mile segment if it would otherwise be forced to comply with the additional FRA regulations. Whitewater would also be forced to abandon its new depot, which was built by the city of Connersville to serve as Whitewater's headquarters and completed in 2000, should it have to abandon the segment, since the depot is located along the segment to the north of Integrity Metals. Currently, Whitewater's passenger trains to Metamora originate at the depot, which the city intended to serve as an attraction to draw tourists to Connersville.

When Whitewater contacted Mr. Halstrom to seek his opinion on the possibility of obtaining waivers of the FRA regulations that would apply to Whitewater if it allowed C&NC access to its track, Mr. Halstrom stated that Whitewater would have to file separate petitions for each waiver request, with individual waivers required for each regulation. He concluded that it would be difficult for Whitewater to obtain numerous waivers that would basically exempt Whitewater on a whole-scale basis from the additional FRA regulations. Mr. Halstrom also estimated that the process to obtain all of the necessary waivers would be time consuming and could take years before it would be entirely completed.

C&NC claims that Integrity Metals has offered to ship a "significant" amount of traffic over Whitewater's property on a regular monthly basis, but has not told Whitewater exactly what "significant" means. Lacking more details about the frequency and volume of the shipments, Whitewater cannot accurately consider how great the impact of C&NC's proposed freight operations would be on Whitewater's operations over the segment.

Finally, Whitewater is concerned with C&NC's financial ability to indemnify Whitewater for any accidents or injuries that might occur on the segment, since it is unclear that C&NC would even be able to cover its insurance deductible. Whitewater's concern is based upon actual experience with C&NC.

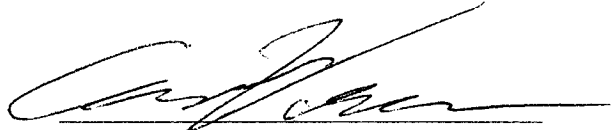
On February 24, 2001, C&NC lost control of three high-cube box cars while switching them for a customer in Connersville. Unbeknownst to Whitewater, C&NC had removed its derail leading onto the Whitewater track, which allowed the runaway cars to enter Whitewater's track. The cars rolled 1.25 miles through Connersville, over twelve grade crossings, and into Whitewater's yard, where they struck and heavily damaged a locomotive and caboose. A C&NC

locomotive that was chasing the runaway cars struck an automobile at one of the grade crossings. Luckily, the woman and child in the car escaped with minor injuries.

The damage to Whitewater's equipment was within C&NC's insurance deductible, and C&NC refused to pay for it. Whitewater was forced to claim against its own insurance, less its deductible. Whitewater subsequently recovered its deductible a few years later, after its insurance company sought and ultimately recovered full damages from C&NC. In light of this experience, Whitewater has no desire to subject itself to even greater risk of financial and physical harm by allowing C&NC to directly operate over its track.

VERIFICATION

I, Emmett A. Vaughan, hereby verify under the penalty of perjury that I am qualified and authorized to submit this Verified Statement on behalf of Whitewater Valley Railroad Corporation and that all of the facts set forth in the foregoing Verified Statement are true and correct to the best of my knowledge. I know that willful misstatements or omissions of material facts constitute federal criminal violations punishable under 18 U.S.C. § 1001 by imprisonment up to five years and fines up to \$10,000 for each offense.

A handwritten signature in black ink, appearing to read 'Emmett A. Vaughan', is written over a horizontal line.

Emmett A. Vaughan

November 19, 2005

EXHIBIT 2

CONDITIONAL SALE AGREEMENT

Indiana Hi-Rail Corp., a Corporation existing under the laws of the State of Indiana (Seller), and Whitewater Valley Railroad, a NOT FOR PROFIT CORP existing under the laws of the State of INDIANA (Buyer).

For good consideration it is agreed between the parties that:

1. Seller agrees to sell, and Buyer agrees to buy the following described property:

All of the part of Seller's Connersville - Beesons rail line segment between M.P. 69.0 and M.P. 67.9 in Fayette County, Indiana, including: right-of-way, track structure, culverts, bridges, crossings, easements, signals and real-estate.

2. Buyer agrees to pay to Seller the total purchase price of \$60,000 cash and one tie handler identified as RTW Model TH 2170 Serial No. 28; payable as follows:

\$12,000.00 deposit herewith
\$48,000.00 balance by cash or certified check at time of transfer
Tie Handler (RTW Model TH 2170 - Serial No. 28) to be transferred at closing

3. Seller warrants it has full authority to sell the property described, and that said property shall be sold free and clear of all liens, encumbrances, and claims.

4. Seller agrees to provide Buyer with a Quit-Claim Deed at time of transfer.

5. Seller agrees to complete the work currently in progress on Indiana Department of Highway Project generally known as the Grand Avenue extension.

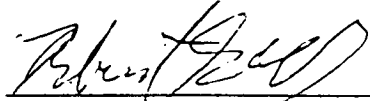
6. Except as specified in paragraph 5 above, the property is sold in "as-is" condition, Seller disclaiming any warranty of merchantability or working order or condition of the property except that it shall be sold in its present condition.

7. The parties agree to transfer title no later than December 29, 1989, at the address of the Seller.

8. The Agreement shall be binding and inure to the benefit of the parties, their successors, assigns and personal representatives.

9. Buyer's failure to close by December 29, 1989, will result in forfeiture of deposit.

Signed under seal this 13th day of DECEMBER, 1989.



Buyer

Whitewater Valley Railroad
P.O. Box 406
Connersville, IN 47331



Seller **EXECUTIVE VICE PRES.**

Indiana Hi-Rail Corporation
R.R. #1
Connersville, IN 47331

FIRST AMENDMENT TO
CONDITIONAL SALE AGREEMENT

Among Indiana Hi-Rail Corporation and
The Whitewater Valley Railroad Company

WHEREAS, the Indiana Hi-Rail Corporation (Seller) and the Whitewater Valley Railroad Company (Buyer), entered into an Agreement dated December 13, 1989, providing for the sell and purchase of 1.1 track miles of rail line in Fayette County, State of Indiana; and

WHEREAS, Seller and Buyer, have agreed to certain changes in the mutual interest of the Seller and Buyer.

NOW THEREFORE, Seller and Buyer agree to the following First Amendment to the AGREEMENT dated December 13, 1989.

Section 2. Buyer agrees to pay to Seller the total purchase price of \$60,000 cash and one tie handler identified as RTW Model TH 2170 Serial No. 28; payable as follows:

\$12,000.00 deposit with execution of AGREEMENT dated December 13, 1989.

~~\$28,000 = \$33,000.00~~ deposit with execution of this FIRST AMENDMENT to the Agreement herewith.

\$15,000.00 balance by cash or certified check at time of transfer.

Tie Handler (RTW Model TH 2170 - Serial No. 28) to be transferred on or before February 10, 1990.

\$5,000 deposit by JANUARY 19, 1990.

Section 4. Seller agrees to deposit in escrow a fully executed Quit-Claim Deed for Buyer to receive upon payment of balance. The Quit-Claim Deed shall be held by the Seller and upon receipt of balance as described in Section 2 of this Amendment Agreement, he shall transfer said Deed to Buyer.

Section 7. The parties agree to transfer title no later than February 24, 1990, at the address of the Seller, State Road One North, Connersville, Indiana, 47331.

Section 9. Buyer's failure to close by February 24, 1990, will result in forfeiture of all deposits and the RTW Model TH 2170 Tie Handler, Serial No. 28.

DLS
RLG

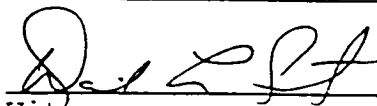
IN WITNESS THEREOF, SELLER and BUYER hereto have caused this Agreement to be made, effective and executed by their respective duly authorized officials.

Signed this 12TH day of JANUARY, 1990.

WHITEWATER VALLEY RAILROAD

By: 

Title: General Manager


Witness

INDIANA HI-RAIL CORPORATION

By: 

Title: EXECUTIVE VICE PRESIDENT

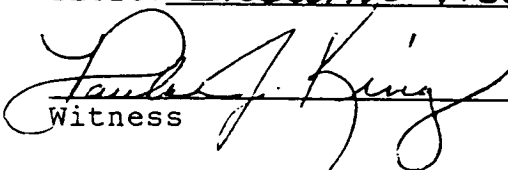

Witness

EXHIBIT 3

SWITCHING AGREEMENT

THIS AGREEMENT is made and entered into this 17 day of June, 1990, by and between INDIANA HI-RAIL CORP. ("IHRC"), a Indiana corporation and WHITEWATER VALLEY RAILROAD CO., an Indiana non-for-profit corporation (hereinafter "WWVR").

5

W I T N E S S E T H:

WHEREAS, IHRC and WWVR are parties to a purchase agreement, dated December 13, 1989, governing the purchase by WWVR of IHRC's line of railroad between M.P. 67.8 and M.P. 69.0 in Connersville, Fayette County, Indiana (hereinafter the "Purchase Agreement"); and

WHEREAS, the Purchase Agreement provides that WWVR and IHRC will enter into an agreement to govern switching of cars, loaded and empty; for any customer on the line segment; and

WHEREAS, to reduce the administrative and other overhead costs, WWVR desires IHRC to perform on behalf of WWVR certain settlement and other functions, and IHRC is willing to perform such functions under the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the premises, the mutual covenants, and the other good and valuable considerations set forth herein, IHRC and WWVR agree as follows:

1. Delivery To/From. For cars moving between IHRC and WWVR, IHRC will deliver cars, loaded and empty, to WWVR and WWVR will deliver cars, loaded and empty, to IHRC at designated track of WWVR at Connersville, Indiana, as shown on the attached drawing, dated January 4, 1990 (hereinafter "Setoff Track"). WWVR hereby grants to IHRC solely for delivery and pickup purposes the right to use the Setoff Track. IHRC will not serve directly from the Setoff Track with its own trains and crews any shippers or receivers located on the Setoff Track nor will IHRC have any right to construct any switches from the Setoff Track.

2. Use of Setoff Track.

(a) The use by IHRC of the Setoff Track pursuant to this Agreement will be subject to the rules and requirements of WWVR and to the control and under the instructions of the superintendent or other proper operating officer of WWVR. IHRC will have equal rights with WWVR in and to the use of the Setoff Track for delivery and pickup purposes and WWVR and IHRC will use the Setoff Track so as to cause the least practicable interference with, interruption of, and danger or delay to the operations of the other party upon the Setoff Track. In placing or leaving cars on the Setoff Track, WWVR and IHRC will place or leave cars in such position as not to obstruct or interfere unreasonably with operation or use of the Setoff Track for purposes other than delivery or pickup or with operations or use of any other trackage.

(b) WWVR will control the maintenance of the Setoff Track and will maintain the Setoff Track at least to the minimum safety requirements for Class I track as specified in the Federal Railway Administration Safety Standards of October 16, 1972, as amended.

(c) IHRC will operate upon the Setoff Track only so long as the physical condition of the Setoff Track is such that the Setoff Track can be used safely and conveniently by IHRC. If at any time during the term of this Agreement, any portion of the Setoff Track over which IHRC may be required to operate to deliver or pickup with WWVR is out of repair or becomes unfit or unsafe for such operation, IHRC may decline to deliver or pickup or operate over the Setoff Track without liability to WWVR for breach of this Agreement or otherwise until WWVR places the Setoff Track or causes the Setoff Track to be placed in good repair for safe and convenient operation. WWVR agrees to provide for such repairs as soon as reasonably possible under the circumstances.

(d) If WWVR's or IHRC's use of the Setoff Track for the purpose of delivery and pickup pursuant to this Agreement is disrupted or traffic is delayed at any time for any cause, neither WWVR nor IHRC will have any claim against the other party for liability for loss or damage of any kind resulting from any such interruption or delay.

(e) Nothing in this Agreement constitutes or will operate as a waiver of IHRC's right to hold cars prior to delivery pickup for payment of all charges due it or of IHRC's right to invoke or participate in any lawful embargo.

4. Equipment. (a) No equipment will be operated by IHRC or WWVR on or over the Setoff Tack in violation of the Federal Safety Appliance Acts, or any other acts or statutes, Federal or state, or of any orders, rules, or regulations of the Interstate Commerce Commission or the Federal Railroad Administration. IHRC and WWVR each will be solely responsible for the consequences of any failure on its part to comply fully with such acts, orders, rules, and regulations, and IHRC and WWVR each will have the right to refuse to accept from the other party hereto any equipment, including foreign equipment in use by such other party, which may not meet the requirements of all such acts, orders, rules, and regulations. If any failure by IHRC or WWVR to comply with such acts, orders, rules, and regulations results in any fine, penalty, cost, or charge being assessed, imposed, or charged against the other party, the party which failed to comply promptly will reimburse and indemnify the other party for or on account of such fine, penalty, cost, or charge. Upon receipt of notice of any such assessment, imposition, or charge, the party which failed to comply will, if it chooses to defend such action, pay all expenses of such defense at its sole expense.

Whitewater Valley Railroad will be responsible for inspecting every car that it receives from Indiana Hi-Rail. Any damage that is noted at this inspection must be brought to the immediate attention of Indiana Hi-Rail. Whitewater Valley will be responsible for any damage that occurs on it's property. If Indiana Hi-Rail receives a car back from Whitewater Valley, and our inspection notes that the car is damaged and such damage had not been brought to the attention of Indiana Hi-Rail upon Whitewater Valley's inspection, then Whitewater Valley will be responsible for the costs associated with repairing that car.

Whitewater Valley Railroad may make repairs to cars subject to this agreement only on cars damaged on Whitewater Valley Railroad Track. All repairs are to be made according to AAR accepted practice and to be inspected by INDIANA HI-RAIL CORPORATION for acceptance.

Whitewater Valley Railroad may waive making repairs; and repairs will be made by INDIANA HI-RAIL CORPORATION and billed to Whitewater Valley Railroad at rates established by AAR for those repairs.

5. Delivery and Pickup. WWVR agrees to pickup cars spotted on Setoff Track within 24 hours of notice by IHRC that cars are spotted on Setoff Track. WWVR agrees to spot cars on Setoff Track for IHRC within 24 hours of release of car by any customer on line segment. Failure to comply with this section may result in WWVR being assessed a \$20 per day car penalty by IHRC for each car in violation. Such penalty will be deducted from the switch allowance as covered in section 7.

6. Wrecks. Whenever there has been an accident or incident on the Setoff Track which requires the rerailing of rolling stock or the services of a wrecking crew or wrecking train, IHRC and WWVR will perform or cause to be performed the rerailing of equipment which is in their respective possession and control at the time of the wreck and WWVR will make repairs to the roadbed, track, or appurtenant structures necessary to restore safe rail operations. The cost and expense of such services and any loss, cost, liability, or expense of such services and any loss of, damage to, or destruction of property or from the injury to or death of any person or persons resulting either from such accident or incident or from the performance of such services will be apportioned in accordance with the provisions of Article 12 of this Agreement. Unless otherwise agreed by the parties hereto, all locomotives, cars, and equipment and salvage therefrom picked up and removed which is owned by, under the management and control of, or used by IHRC at the time of such wreck will be retained by or delivered promptly to IHRC, and all such locomotives, cars, equipment, and salvage owned by, under the management and control of, or used by WWVR at the time of such wreck will be retained by or delivered promptly to WWVR.

7. Handling Allowance. (a) IHRC will pay to WWVR for each car handled by IHRC in revenue service, delivered to or received from WWVR pursuant to this Agreement at Connersville, and originated or terminated by WWVR on its line between M.P. 69.0

and M.P. 67.8 and delivered to/from CSXT at Connersville, Indiana: \$150 per car, and delivered to/from NS at New Castle, Indiana: \$50 per car.

(b) Said allowance will be effective on the date of commencement of WWVR's purchase and operation of the Line pursuant to the Purchase Agreement, will be subject, at the election of IHRC or of WWVR, to any or all Rail Cost Adjustment Factor increases (or increases according to another index agreed upon by WWVR and IHRC), and may be changed at any time by agreement of WWVR and IHRC (and WWVR and IHRC agree that they will, at the request of the other party, confer in good faith, at reasonable times and at a location convenient to the party not requesting the discussion, to discuss any changes to the charges desired by the other party); provided, however, that in addition to the handling allowance provided in Paragraph (a) of this Article, WWVR may publish at its sole discretion any additional charges for services it provides on the Line.

8. Settlement. IHRC will perform revenue settlement for all cars handled between IHRC and WWVR pursuant to this Agreement and handled by WWVR on the Line. On the fifteenth day of each month, or on such other days as the parties mutually agree, IHRC will forward to WWVR, two statements of allowances due WWVR by IHRC for the previous calendar month's traffic along with a check governing payment of same.

9. Notices. All written communications between the parties under this Agreement should be addressed as follows:

To IHRC:

Indiana Hi-Rail Corporation
Rt. 1
Connersville, IN 47331

To WWVR:

Whitewater Valley Railroad
P.O. Box 406
Connersville, IN 47331

10. Demurrage. Indiana Hi-Rail will be assessing demurrage charges against Cohen Brothers, or any other shipper which is served by Indiana Hi-Rail per this agreement. Indiana Hi-Rail expects payment of all demurrage bills applied to these customers, irregardless of whether or not such demurrage bills were a result of movement delays on behalf of Whitewater Valley. It will be the responsibility of Whitewater Valley and any customer it serves on behalf of Indiana Hi-Rail to work out car movement problems and associated demurrage charges between themselves.

All payments for demurrage on cars originating or terminating on the Line and handled pursuant to this Agreement will accrue to IHRC, and it will be the obligation of IHRC to bill customers for and collect all such payments.

11. Weighing. Scale fees for weighing of cars interchanged pursuant to this Agreement will be the responsibility of and will be paid to IHRC. Notwithstanding the above, WWVR may, at its election, publish and collect charges for scale fees for weighing cars on its own scales. It is expressly understood that as a switching carrier, IHRC is not required to scale cars.

12. Liability. (a) The responsibility of the parties to this Agreement as between themselves for loss of, damage to, or destruction of property, excluding lading moving under a contract of carriage, and for injury to or death of any person or persons resulting from, arising out of, incidental to, or occurring in connection with this Agreement will be determined as follows:

(i) Whenever any such loss involves only trains, locomotives, cars, or equipment operated by or in the possession of one of the parties hereto, that party will assume all liability therefore and bear all cost and expense in connection therewith, including all cost, expense, and liability arising under Articles 6 of this Agreement, and will forever protect, defend, indemnify, and save harmless the other party and its officers, agents, employees, lessors, parent corporation, subsidiaries, affiliates, successors, and assigns from and against any such liability, cost, and expense;

(ii) Whenever any such loss involves trains, locomotives, cars or equipment operated by or in the possession of both IHRC and WWVR, IHRC and WWVR each separately will assume all liability, cost, and expense for loss of or damage to its trains, locomotives, cars, and equipment and for injury to and death of its and its parent's, subsidiaries', affiliates', and lessors' officers, agents, and employees. All liability, cost, and expense for injury to and death of any other person or persons and for loss of, damage to, and destruction of all other property and all cost, expense, and liability arising under Article 6 of this Agreement will be borne equally by IHRC and WWVR; and

(iii) Each party hereto will bear all loss, damage, and expense for which it is responsible pursuant to this Agreement. Such party will forever indemnify and save harmless the other party and the other party's officers, agents, employees, successors, assigns, parent corporation, subsidiaries, affiliates, and lessors from and against all liability and claims of whatever kind or nature by reason thereof and will pay, satisfy, and discharge all judgments that may be rendered by reason thereof and all costs, charges, and expenses incident thereto. The responsibility undertaken pursuant to this Article is without respect to fault, failure, negligence, misconduct, malfeasance, or misfeasance of either party.

(b)(i) Except as provided in the last sentence of this Subparagraph, liability for loss and damage to lading moving under a contract of carriage will be apportioned between IHRC and WWVR in accordance with all applicable rules and procedures of the Association of American Railroads' Freight Claim and Damage Prevention Division (hereinafter the AAR Freight Claim Division) including its Rules of Order, Principles and Practices, Freight Claim Rules, and prior arbitration decisions interpreting or construing any of them (hereinafter collectively AAR Rules and Procedures). WWVR will be bound by said AAR Rules and Procedures whether or not WWVR becomes a member of the AAR Freight Claim Division. WWVR will assume all liability, if any, for loss or damage to lading that (1) does not occur while the lading is in IHRC's possession, and (2) does not arise from or in connection with any act of or omission by IHRC; and

(ii) In the event of any dispute about apportionment of liability under this Paragraph, IHRC and WWVR will request such dispute will be arbitrated in accordance with the provisions of Article 15 of this Agreement; and

(c) For the purpose of determining responsibility under the provisions of this Article, rolling stock which is being handled between the parties hereto will be considered to be in the possession and control of the party to which it is being delivered when it has been placed on the Setoff Track, the brakes have been properly secured, the engine making the delivery has been uncoupled, and the receiving party has been notified of the placement. The receiving will have the right to inspect and reject any car delivered to it, but until the delivering party has received notice of such rejection and, if the car has been moved from the Setoff Track, the car is returned to the Setoff Track, the car will be considered to remain in the possession of the receiving party.

13. Investigation of Claims. IHRC will investigate, adjust, and defend all claims filed with it for loss or destruction of or damage to lading moving under a contract of carriage and handled between IHRC and WWVR pursuant to this Agreement. IHRC will process such claims in compliance with all applicable laws, government regulations, offering circulars, and transportation contracts. IHRC also will process such claims in compliance with the applicable AAR Rules and Procedures.

14. Insurance. (a) WWVR will procure and maintain in effect during the term of this Agreement a policy or policies of insurance covering the liability to which WWVR is or may be subject under Article 12 of this Agreement. Such insurance will provide minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence but may be subject to an annual aggregate limit of Two Million Dollars (\$2,000,000.00) and a per occurrence deductible not in excess of One Hundred Thousand Dollars (\$100,000.00). WWVR further agrees to immediately give written notice to IHRC of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company.

(b) If the insurance procured by WWVR pursuant to this Article takes the form of a Claims-Made Policy and is canceled or allowed to expire without renewal, WWVR will provide evidence of insurance that provides per occurrence and annual aggregate limits not less than those required pursuant to Paragraph (a) of this Article. Such coverage must be retroactive to the original inception date of the canceled or non-renewed policy.

(c) At any time not less than sixty (60) days prior to an anniversary date of this Agreement, IHRC, in consideration of current and reasonably anticipated claims and litigation costs, may notify WWVR of IHRC's intent to increase the amount of insurance required by this Agreement or to require that the terms and conditions of such insurance be modified. Should WWVR object to any such increase or modification, WWVR and IHRC will attempt in good faith to negotiate a resolution of their disagreement.

If Shortline and Railroad are not able to agree and such disagreement continues for thirty (30) days past the anniversary date of this Agreement, then the matter or matters in disagreement will be submitted to arbitration pursuant to Article 15 hereof.

(d) Each policy of insurance obtained by WWVR pursuant to the requirements of this Article will contain provisions requiring that the insurance carrier give IHRC at least thirty (30) days notice in writing of any proposed policy cancellation or any material modifications of the terms and conditions of any policy of insurance WWVR is required to provide under this Article.

(e) The terms and condition of each policy of insurance obtained by WWVR to satisfy the requirements of this Article will be subject to the approval of IHRC. At least thirty (30) days prior to the effective date of this Agreement pursuant to Article 19 of this Agreement, WWVR will furnish to IHRC an accurate copy of each policy of insurance obtained pursuant to the requirements of this Article. Neither compliance with this requirement nor IHRC's approval of the terms and conditions of any such policy will in any way limit or modify the obligation of WWVR to provide the specific insurance coverage required by this Article.

15. Arbitration. Any claim, dispute, or controversy between IHRC and WWVR arising out of or relating to this Agreement or the breach of this Agreement which cannot be settled by the parties themselves will be determined by arbitration. The

location of the arbitration will be in Indianapolis, Indiana, or other mutually agreed place. The decision of the arbitrator will be final and binding. Any award of monetary relief by the arbitrator will be limited to awarding the prevailing party its actual damages. Judgment to enforce the decision or award of the arbitrator may be entered in any court having jurisdiction. Service of process in connection with such arbitration will be made by certified mail. In any judicial proceeding to enforce this Article, the only issues to be determined will be the existence of an agreement to arbitrate and the failure of one party to comply with such agreement, and those issues will be determined summarily by the court without a jury. All other issues will be decided by the arbitrator, whose decision thereon will be final and binding. There will be no appeal of an order compelling arbitration except as part of an appeal concerning confirmation of the decision of the arbitrator. Each party to the arbitration will pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel arising from the arbitration. The compensation, costs, and expenses of the arbitrator, if any, will be borne equally by IHRC and WWVR.

16. Assignment and Sole Benefit. (a) This Agreement may be assigned by WWVR only with the written consent of IHRC signed by an authorized officer. To obtain IHRC's consent to such an assignment, WWVR will provide written notice to IHRC of its desire to assign this Agreement, including a letter signed by an authorized officer of the intended assignee stating that the assignee agrees to such assignment and agrees to be bound by all

the terms of such assignment. This Agreement will be binding upon the inure to the benefit of successors and assigns of IHRC and successors and permitted assigns of WWVR.

(b) This Agreement is intended for the sole benefit of the parties hereto, nothing in this Agreement is intended or may be construed to give any person, firm, corporation, or other entity, other than the parties hereto and their respective officers, agents, employees, lessors, parent corporation, subsidiaries, affiliates, successors, and assigns, any right pursuant to any provision or term of this Agreement, and all provisions and terms of this Agreement are and will be for the sole and exclusive benefit of the parties to this Agreement, except as provided in Paragraph (a) of this Article.

17. Non-Waiver. At any time during the term of this Agreement, IHRC or WWVR may waive any default of the other party under this Agreement without affecting or impairing any right arising from any other default under this Agreement.

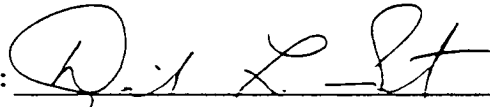
18. Amendment. This Agreement may be modified only by an instrument in writing signed by an authorized officer of IHRC and of WWVR.

19. Effective Date. This Agreement will take effect as of the date of commencement of WWVR's operation of the Line pursuant to the Purchase Agreement and will continue in effect thereafter until such time as IHRC or WWVR terminates this Agreement by serving upon the other sixty (60) days' written notice of its election to do so.

20. Captions. The captions of the articles herein are inserted for convenience only and shall in no way expand, restrict or modify the terms and provisions of any clause hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

INDIANA HI-RAIL CORPORATION

BY: 
TITLE: Executive Vice President

WHITEWATER VALLEY RAILROAD


BY: 
TITLE: General Manager

EXHIBIT 4

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT is made and entered into this 2nd day of June, 1993, by and between INDIANA HI-RAIL CORPORATION, an Indiana Corporation (hereinafter "IHRC"), and WHITEWATER VALLEY RAILROAD, an Indiana Corporation (hereinafter "WVRR").

WITNESSETH:

WHEREAS WVRR is the owner and operator of a line of railroad at Connersville, Indiana (hereinafter the "Rail Line"); and

WHEREAS, IHRC desires to provide rail freight operations over the Rail Line through a grant of trackage rights from WVRR;

NOW, THEREFORE, in consideration of the premises, the mutual covenants, and the other good and valuable considerations set forth herein, IHRC and WVRR agree as follows:

1. GRANT OF TRACKAGE RIGHTS

WVRR hereby grants to IHRC the right to operate in both directions over WVRR's Rail Line between Milepost 0 at the connection with IHRC's railroad at Connersville, Indiana and Milepost 67.8 on WVRR Rail Line at Connersville, Indiana. These rights include the right to directly serve Cohen Brothers Metals located on the Rail Line.

2. USE OF THE RAIL LINE

(a) WVRR shall be responsible for inspection and maintenance requirements of the Rail Line to the minimum safety requirements. IHRC shall be responsible for repairs due to damages directly caused by IHRC.

(b) Should at any time during the term of this Agreement, the Rail Line become unfit or unsafe for operations, responsibility for repairs and restoration of service shall lie with WVRR unless damages are directly caused by IHRC.

3. COMPENSATION

(a) IHRC shall compensate WVRR at a flat rate of \$1500 (one thousand five hundred dollars) for each of the first twelve month periods. 1st PAYMENT June 2, 1993 - 2nd PAYMENT June 2, 1994

(b) In the event of IHRC applying for abandonment of its Connersville operation during the term of this Agreement, IHRC shall grant WVRR right of first right of refusal to purchase connection to CSXT at Connersville, Indiana.

4. OPERATING COMPLIANCE

IHRC shall be solely responsible for its operations over the Rail Line and shall conduct said operations in compliance with all applicable Federal, State, or Local rules, regulations and ordinances. If any failure by IHRC to comply with such ordinances, rules, and regulations results in any fine, penalty, cost, or charge being assessed, imposed, or charged against WVRR, then IHRC will reimburse and indemnify WVRR for or on account of such fine, penalty, cost, or charge.

IHRC shall notify WVRR of any train movement on Saturdays or Sundays and shall not interfere with WVRR's scheduled operations.

5. TERM

The term of this agreement shall be effective June 1, 1993 and expire December 31, 1993.

6. NOTICE

All written communications between the parties concerning this Agreement should be addressed as follows:

To IHRC: Indiana Hi-Rail Corporation
4301 N. St. Rd. 1
Connersville, IN 47331

To WVRR: Whitewater Valley Railroad
255 Eastern Avenue P.O. Box 406
Connersville, IN 47331

7. LIABILITY

Each party shall be responsible for the acts or omissions of its officers, agents, employees, lessors, subsidiaries, affiliates, successors, and assigns in regard to any and all

liabilities arising under this Agreement. Whenever any loss of, damage to, or destruction of property, or injury to or death of any person or persons resulting from, arising out of, incidental to, or occurring in connection with this Agreement involves only trains, locomotives, cars, or equipment operated by or in the possession of IHRC, IHRC will assume all liability therefrom and bear all cost and expense in connection therewith, including all cost, expense, and liability, and will forever protect, defend, indemnify, and save harmless WVRR and its officers, agents, employees, lessors, subsidiaries, affiliates, successors, and assigns from and against any such liability, cost, and expense.

8. INSURANCE

IHRC will procure and maintain in effect during the term of this Agreement a policy or policies of insurance covering the liability to which IHRC is or may be subject under this Agreement for operating on the trackage of WVRR. Such insurance will provide minimum limits of Five Million Dollars (\$5,000,000.00) per occurrence. Upon request, IHRC shall provide WVRR a certificate of insurance providing proof that the insurance required under this item is in full force and effect during the term of this Agreement.

9. ASSIGNMENT AND SOLE BENEFIT

This Agreement may be assigned by IHRC only with the written consent of WVRR, signed by an authorized officer, which consent will not be unreasonably withheld. This Agreement will be binding upon and inure to the benefit of successors and assigns of WVRR and successors and permitted assigns of IHRC.

10. NON-WAIVER *

At any time during the term of this Agreement, either party may waive any default of the other party under this Agreement without affecting or impairing any right arising from any other default under this Agreement.

11. AMENDMENT

This Agreement may be modified only by an instrument in writing, signed by an authorized officer of WVRR and of IHRC.

12. FORCE MAJURE

In the event either party shall be prevented from performances of this Agreement due to reasons wholly beyond its control such as, but not limited to, war, riot, civil insurrection, strike, lockouts, explosion, fire or Acts of God, then the non performance on the part of the effected party shall not constitute a breach of this Agreement.

* BY _____

13. CAPTIONS

The captions of the articles herein are inserted for convenience only and shall in no way expand, restrict or modify the terms and provisions of any clause hereof.

14. GOVERNING LAW

This Agreement shall be construed and enforced under the laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

Indiana Hi-Rail Corporation

By

T. H. A. [Signature]

Title

Sales Manager

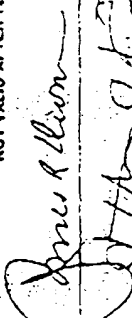
Whitewater Valley Railroad

By

[Signature]

Title

General Manager

INDIANA HI-RAIL CORPORATION STATE ROAD 1 NORTH CONNERSVILLE, IN 47331 corp.		UNION COUNTY NATIONAL BANK LIBERTY, INDIANA		CHECK NO. No. 009275 1523-9275-17
INDIANA HI-RAIL CORPORATION		06/02/1993 DATE		
** One Thousand Five Hundred Dollars and 00 Cents **		*****1,500.00 AMOUNT		
PAY TO THE ORDER OF WHITEWATER VALLEY RAILROAD 255 EASTERN AVE. CONNERSVILLE IN 47331		NOT VALID AFTER 120 DAYS  AUTHORIZED SIGNATURE		

009275 00743054610 200122 20

Amendment No. 1 to Trackage Rights Agreement dated June 2, 1993.

IN WITNESS WHEREOF, the parties hereto amend this Agreement between IHRC and WVRP as follows:

5. TERM

The term of this Agreement will be extended through December 31, 1997.

Whitewater Valley Railroad

By: Maurice E. Zerkow

Title: PRESIDENT

Date: DECEMBER 29, 1995

Indiana Hi-Rail Corporation

By: Timothy A. Zerkow

Title: AVP

Date: December 29, 1995

*Spence -
Please review
and comment
P*

EXHIBIT 5

AGREEMENT

This Agreement is made and entered into this twentieth day of June, 1995, by and between Indiana Hi-Rail Corporation, an Indiana Corporation (hereinafter "IHRC"), and Whitewater Valley Railroad, and Indiana Corporation (hereinafter "WVRR").

IHRC agrees to furnish classroom and field training required by the F.R.A. for the WVRR Engineer Certification Program.

WVRR agrees to provide trackage rights to IHRC to directly serve Cohen Brothers Metals. Trackage rights will be provided at no charge to IHRC from June 2, 1995, through December 31, 1997, in exchange for the Engineer Certification Program furnished by IHRC.

A separate trackage rights agreement covering this period of time will be executed between WVRR and IHRC.

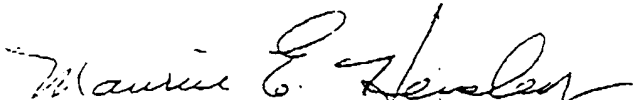
In witness whereof, the parties hereto have caused this agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

Signature:



R. Franklin Unger - Trustee
Indiana Hi-Rail Corporation

Signature:



Maurice E. Hensley, President
Whitewater Valley Railroad

EXHIBIT 6

WHEREAS, pursuant to the Purchase Agreement with C&NC Associated Investors, Inc. and its designees, IHRC will assign, delegate and transfer all of its rights, duties and obligations contained in the contract(s) and agreement(s) listed below.

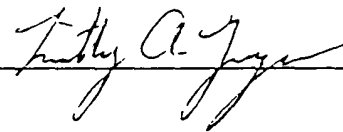
NOW THEREFORE, please take notice that:

1. The contracts listed below are hereby assigned and delegated to C&NC Railroad Corporation as of December 19, 1997 at 12:01 a.m.

2. The Designee shall assume and undertake, without recourse to IHRC, all liabilities, duties, covenants, commitments, and other obligations of IHRC with respect to such contracts from and after December 19, 1997.

Dated: December 8, 1997

Indiana Hi-Rail Corporation
Sagamore National Corporation

BY: _____

CONTRACTS AND AGREEMENTS:

AGREEMENT BETWEEN INDIANA HI-RAIL CORPORATION AND WHITEWATER VALLEY RAILROAD

1. June 2, 1993, Trackage Rights Agreement, Connersville, Indiana

EXHIBIT 7

Whitewater Valley The Canal Route Railroad

GENERAL OFFICES:

300 S. EASTERN AVENUE

P.O. BOX 406 - CONNERSVILLE, INDIANA 47331

PHONE: (317) 825-2054

P 353 084 802



Receipt for
Certified Mail

No Insurance Coverage Provided
Do not use for international Mail
(See Reverse)

HI-RAIL	
R21 - ST RD - 1 N3	
C.S. CONNERSVILLE IN	
Postage	\$ 25
Delivery Fee	100
Special Delivery Fee	
Registered Delivery Fee	
Postage Insurance (to be paid to add to Date of Receipt)	100
Postage Insurance (to be paid to add to Date of Receipt)	
Postage Insurance (to be paid to add to Date of Receipt)	
TOTAL POSTAGE & FEES	\$ 225
Postage	

PS Form 3800, June 1991



Tim Yeager
Sales Manager
Indiana Hi-Rail Corp.

Mr. Yeager

The Whitewater Valley Railroad Board of Directors voted to have Indiana Hi-Rail Corp. cease all car movements on Whitewater Valley Railroad property.

This action stems from the fact Indiana Hi-Rail Corp. and Whitewater Valley Railroad have not reached a permanent trackage rights agreement that results in a positive monetary benefit to the Whitewater Valley Railroad.

Ninety day notice is here by given on March 18, 1993 to be effective June 16, 1993.

Sincerely,

Laurence A. Shiplett
General Manager

c: Mrs. Martha Glaser

CONNERSVILLE

MULLTOWN

LAUREL

LAUREL

LAUREL DAM

METAMORA

A NOT-FOR-PROFIT CORPORATION TO PRESERVE AND OPERATE AN HISTORIC RAILROAD
AND TO DISPLAY STEAM RAILWAY EQUIPMENT AND CONDUCT SEMINARS.

EXHIBIT 8



U.S. Department
of Transportation

**Federal Railroad
Administration**

Region IV

200 West Adams Street
Suite 310
Chicago, IL 60605

December 12, 2002

Mr. John Hillman
President
Whitewater Valley Railroad
300 South Eastern Avenue
PO Box 406
Connersville, Indiana 47331

Dear Mr. Hillman:

In response to the detailment of the Whitewater Valley Railroad's (WVRR) scenic passenger train on December 7, 2002, the Federal Railroad Administration (FRA) has been on your property inspecting various aspects of your operation. On Wednesday, December 11, 2002, our Chief Inspector in charge of Drug and Alcohol Programs inspected your program.

According to our records, the WVRR indicates they have an FRA approved Random Plan from 1995. Our inspector could not locate a copy and WVRR could not provide a copy of the WVRR's Drug and Alcohol Policy or its Random Plan while he was on the property. He did however, speak with Mr. Morris Hensley, Designated Supervisor of Locomotive Engineers and discussed the WVRR's Drug and Alcohol Policy. Mr. Hensley stated that the WVRR does not have a written policy regarding random drug and alcohol testing but, that he tries to select a couple of people each year to be tested. If the WVRR has an FRA approved plan, this level of implementation would not be in compliance with that plan.

Our investigation revealed that the WVRR is a non-insular railroad that is not part of the general railroad system of transportation. As such, the WVRR is not required to, nor may it have a Federal Drug or Alcohol Plan. The WVRR may, if it chooses, use Company authority to test its Hours of Service employees (including volunteers) for pre-employment, random testing, reasonable suspicion, reasonable cause and post-accident but, it may not use Federal Authority to perform such tests.

Our inspector reviewed several personnel files and discovered Federal Custody and Control Forms for Drug and Alcohol testing had been used for random and pre-employment tests. This must stop immediately or the FRA will have no other choice but to request a civil penalty. If you have any questions regarding this, please contact Alan Hallstrom, Chief Inspector in charge of Drug and Alcohol Programs at (317) 226-0390 and he will be happy to help you set up a Company authority testing program.

Sincerely,

Laurence H. Hasvold
Regional Administrator

EXHIBIT 9



INDIANA HI - RAIL CORPORATION

Rural Route 1, Box 242

Connersville, Indiana 47331

September 25, 1989

Mrs. Martha Glazer
Cohen Brothers Metals Co.
P.O. Box 326
Connersville, IN 47331

Mr. Robert Gold
Whitewater Valley Railroad
P.O. Box 406
Connersville, IN 47331

Mayor Len Bastian
120 West 4th
Connersville, IN 47331

Bob
Dear Mr. Gold:

Indiana Hi-Rail has worked at and invested in its Connersville operation since 1981. Over the past several years, transportation patterns have undergone many changes. The result of these changes has left the portion of IHRC's line south of the CSX connection track (MP 69.0) no longer viable for continued IHRC operation.

Since the first of the year the traffic handled on the 1.1 miles from MP 69 to the connection with the Whitewater Valley Railroad at MP 67.9 has been only 9 revenue carloads. Compounding the factor of minimal traffic are other factors that make the operation of this portion of trackage extremely costly.

This short portion of trackage has 12 grade crossings which require expensive maintenance, and expose IHRC to serious liability. The liability factor seems unique to Connersville. While IHRC has over 200 grade crossings in its system, the only grade crossing related litigation has all been in Connersville. Indeed, the Grand Avenue crossing has been the subject of 4 suits.

The grade crossings in this section of track require frequent sounding of the locomotive horn to comply with state law. This has drawn complaints from local residents to the point where IHRC has been forced to alter its operating pattern. Trains are only permitted on this trackage after 6 AM which frequently does not mesh well with IHRC's other service between Connersville and New Castle.

"Shippers & Service are 'Hi' priority with us"

A final factor detrimental to the economics of the trackage is the property taxes associated with this small segment. Due to Indiana's archaic way of allocating property taxes on railroads and the fact that this trackage lies within the city limits, it is subject to disproportionately high property tax. Ironically, while the trackage is in the bottom 10% of the IHRC's system in terms of generating revenue, it is in the top 10% of trackage in terms of property taxes.

IHRC has been exempted from Interstate Commerce Commission jurisdiction covering abandonment of the portion of track south of MP 69. Thus, IHRC is permitted to dispose of the trackage without further regulatory delay. However, IHRC wishes to cooperate with the effected parties and is willing to offer the trackage for sale at its net liquidation value.

Net liquidation Value (NLV) is calculated by determining the gross salvage value of the rail, ties, and other track material, less the cost of salvaging these materials. Another component of NLV is the property value of the underlying real estate which may be sold once the tracks are removed. IHRC has determined that the NLV of the trackage south of MP 69 is \$102,000. This value reflects the cost of restoring the paving in several of the grade crossings as well as the value of the real estate.

Should one of the effected parties desire to purchase the trackage for continued rail use, IHRC is willing to assist in adjusting its switch fees to provide for a source of income for the operating party. IHRC would agree to a reduction in its switch fee to CSX of \$150 per carload which in turn could be applied to movements over the trackage by the new operator. The new operator need not become a common carrier. Instead they may wish to be a private carrier and avoid much governmental regulation.

IHRC is on a very tight time frame for completing disposal of this trackage. Due to a shortfall in State of Indiana funding for a major IHRC track upgrading in the Evansville area, IHRC must come up with over \$100,000 in additional money for this rehabilitation project. It is indeed unfortunate that the necessary State funding for IHRC's track rehabilitation has instead been grated to the City of Lafayette for a continuing rail-highway relocation project. Thus, the proceeds from the sale of the trackage in Connersville will go to offset the shortage in State track rehabilitation loan funding.

IHRC will accept purchase offers from any of the effected parties until October 18, 1989. Within ten days of agreement on purchase price, IHRC will require a ten percent down payment as earnest money. IHRC anticipates that closing and transfer of title will be within 30 days of the initial agreement.

September 25, 1989
Page 3

If no firm purchase offer is made and accepted by October 18th, then IHRC will proceed with the salvage of the track materials. Once salvage has commenced, the process is for all practical purposes, irreversible.

I urge you to fully consider all of your alternatives in an expeditious manner and notify IHRC of your intentions as soon as possible. IHRC will cooperate with all reasonable request for further information. Please call Dave Smoot or myself at 825-0349 to discuss this matter further.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Powell", written in dark ink.

R. Powell Felix
President

RPF/lac

EXHIBIT 10



INDIANA HI - RAIL CORPORATION

Rural Route 1, Box 242

Connersville, Indiana 47331

October 16, 1989
U.S. Mail-Certified

Mr. Robert Gold
General Manager
Whitewater Valley Railroad
P.O. Box 406
Connersville, In 47331

Dear Mr. Gold:

In response to your letter dated October 13, 1989, governing your offer for the purchase of our rail line between M.P. 69.0 and M.P. 67.9 in Fayette County, Indiana.

After reviewing your offer we believe an Agreement is possible if the following values are added:

(1) Our review of property title and deeds indicates that our Corporation still holds title to the right-of-way between 1st Street (SR 121) and Eastern Avenue consisting of approximately 1.7 acres. This is sister property to the 2.38 acres purchased by the City of Connersville, Indiana, for the Grand Avenue Project in 1986. The value of that property was \$3500 per acre, therefore the 1.7 acres would be \$5,950.00 which will be added to the NLV.

(2) Your proposal listing the salvage material inadvertently left off the value of the cantilever signals at SR 44. The material was installed new this calendar year with a new material cost of \$23,109.00 (material only, no freight or installation) a 60% salvage value would make the NLV \$13,865.00 which adds to the NLV.

The inclusion of these two items reflects a revised net liquidation value of \$69,815.00, which is acceptable by Indiana Hi-Rail Corporation for this rail line.

We are agreeable to adjusting our switch fee with a \$150 per car reduction for movement to CSX, which would be available to the Whitewater Valley Railroad for their handling cars to interchange with IHRC at M.P. 69.0. Additionally, we are willing to enter into an Agreement where-by non-revenue cars handled to or from CSX for account of the WWV RR would be handled free-on-line.

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Mr. Robert Gold
October 16, 1989
Page 2

Movements to NS at New Castle, Indiana, would be handled for the published tariff rate (currently \$356 per car), this necessitated because of our lease arrangement with NS. Your Company would have to arrange to collect a fee for handling cars routed to NS at New Castle, Indiana.

This offer is extended to 5:00 pm, October 20, 1989. If no reply is received by that time and date at the above address, it will be assumed that this offer is rejected and we will there upon ~~proceed with dismantling plans.~~

Respectfully,



R. Powell Felix
President

RPF/arn

EXHIBIT 11



INDIANA HI - RAIL CORPORATION

Rural Route 1, St. Rd. 1 North
Connersville, Indiana 47331

Phone (317) 825-0349
Fax (317) 825-0453

October 31, 1989
US Mail Certified

Mr. Robert Gold
General Manager
Whitewater Valley Railroad
P.O. Box 406
Connersville, IN 47331

Dear Mr. Gold:

In reply to your letter dated October 26, 1989, concerning the signal material at SR 44 (3rd Street) in Connersville, Indiana, and your offer of \$50,000 for the rail line segment.

As we have discussed several times, your bid for \$50,000.00 is unacceptable for the purchase of the 1.1 mile line segment. The acceptable Net Liquidation Value is \$69,815.00, 20% down with balance at closing.

While I appreciate your offer to give up the cantilever signals, I regret that such an option is only available if the line is physically removed. The signals, as installed, must remain with the line so-long-as the line remains. Therefore, the Net Liquidation Value of the signals must remain a portion of the line sale.

I regret that if a formal acceptance of our offer to sell at \$69,815.00 is not received by November 15, 1989, we will be forced to proceed with our retirement plan. This will certainly affect your annual Santa Run, and possibly your normal operations.

Please forward your acceptance as promptly as possible before November 15, 1989, so we may progress to a closing.

Respectfully,

A handwritten signature in dark ink, appearing to read "David L. Smoot".

David L. Smoot
Executive Vice President

cc: Mayor Len Bastian
Gregg M. O'Maley (Cohens)

DLS/mdf

"Shippers & Service are 'Hi' priority with us"

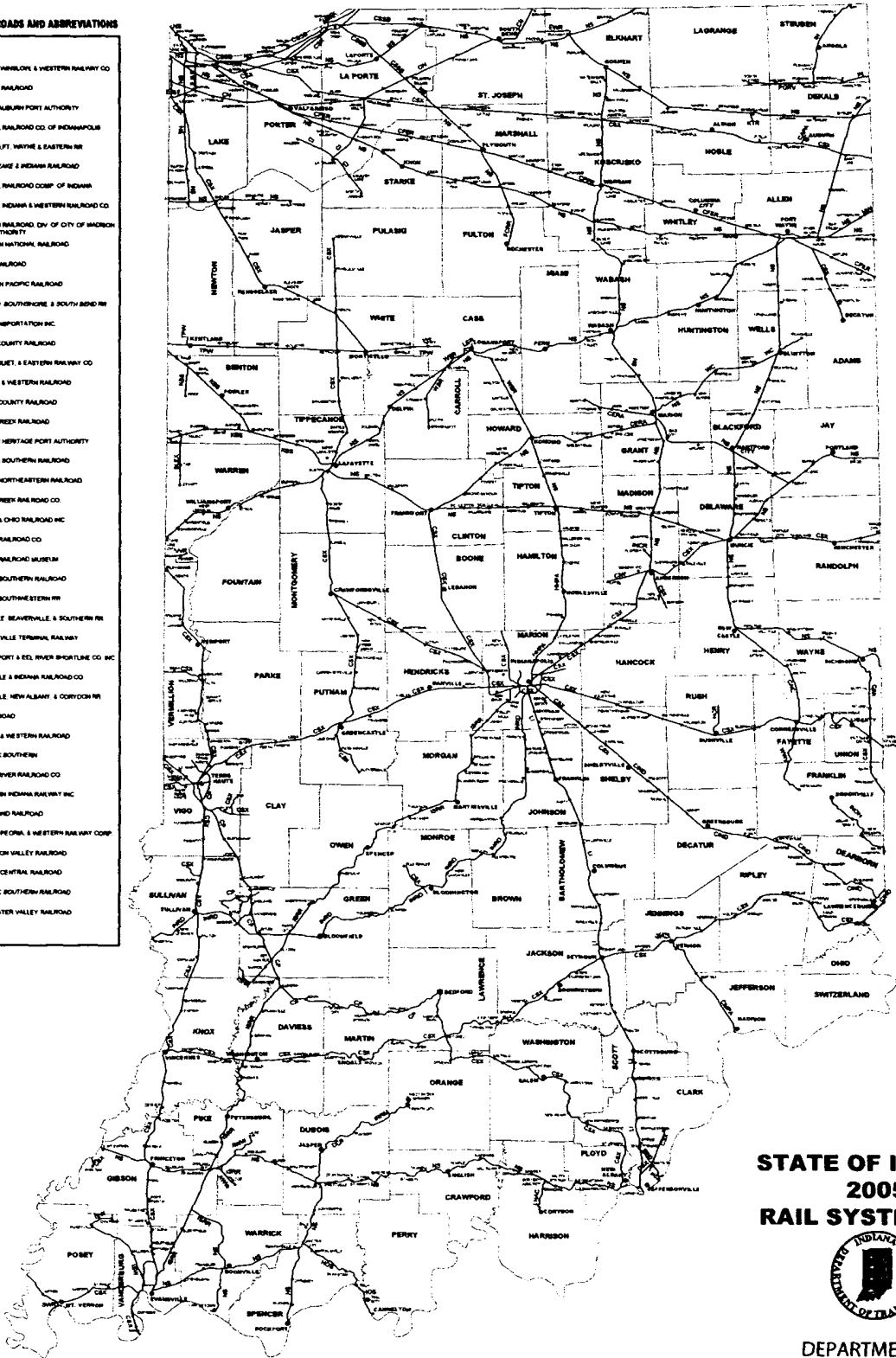
EXHIBIT 12

EXHIBIT 13

INDIANA RAILROADS

INDIANA RAILROADS AND ABBREVIATIONS

- | | |
|------|---|
| ANTA | AMTRAK |
| ALX | ALBERTA, WINDSOR & WESTERN RAILWAY CO. |
| BLW | BEE LINE RAILROAD |
| CAPA | CITY OF ALBANY PORT AUTHORITY |
| CERA | CENTRAL RAILROAD CO. OF INDIANAPOLIS |
| CHIC | CHICAGO, MILWAUKEE & EASTERN RR |
| CHI | CHICAGO & INDIAN RAILROAD |
| CIND | CENTRAL INDIAN RAILROAD CO. OF INDIANA |
| CIN | CENTRAL INDIANA & WESTERN RAILROAD CO. |
| CINB | CANADIAN NATIONAL RAILWAY CO. OF CITY OF INDIANAPOLIS |
| CN | CANADIAN NATIONAL RAILROAD |
| CNC | C & NC RAILROAD |
| CP | CP CANADIAN PACIFIC RAILROAD |
| CSB | CHICAGO, SOUTH BEND & SOUTH BEND RR |
| CSX | CSX TRANSPORTATION INC. |
| DJR | DUBLIN COUNTY RAILROAD |
| ELN | ELGIN, JOLIET & EASTERN RAILWAY CO. |
| ENR | ELGIN & WESTERN RAILROAD |
| FCRR | FALCON COUNTY RAILROAD |
| HCR | HONEY CREEK RAILROAD |
| HHPA | HOOBSEN HERITAGE PORT AUTHORITY |
| HOB | HOOBSEN SOUTHERN RAILROAD |
| HN | INDIANA NORTH-EASTERN RAILROAD |
| ICR | INDIAN CREEK RAILROAD CO. |
| ICW | INDIANA & CHICAGO RAILROAD INC. |
| IND | INDIANA RAILROAD CO. |
| IRM | INDIANA RAILROAD MUSEUM |
| ISRR | INDIANA SOUTHERN RAILROAD |
| ISW | INDIANA SOUTHWESTERN RR |
| KBR | KANAWHEE BEAVERDALE & SOUTHERN RR |
| KTR | KENDALLVILLE TERMINAL RAILWAY |
| LER | LOANSBORO & EEL RIVER SHORTLINE CO. INC. |
| L | LOUISVILLE & INDIAN RAILROAD CO. |
| LU | LOUISVILLE, NEW ALBANY & CORYDON RR |
| MGR | MG RAILROAD |
| MW | MAUMEE & WESTERN RAILROAD |
| MS | MORRISVILLE SOUTHERN |
| PRV | PRISON FERRY RAILROAD CO. |
| SHD | SOUTHERN INDIANA RAILWAY INC. |
| SVR | SOUTH BEND RAILROAD |
| TW | TOLEDO, PEORIA & WESTERN RAILWAY COMP. |
| VVR | VERMILION VALLEY RAILROAD |
| WC | WABASH CENTRAL RAILROAD |
| WBR | WARRIACAN SOUTHERN RAILROAD |
| WW | WHITTENBURY VALLEY RAILROAD |



STATE OF INDIANA 2005 RAIL SYSTEM MAP



DEPARTMENT OF
TRANSPORTATION

Mitchell E. Daniels, Governor
Thomas O. Sharp, Commissioner

Base Map Generated from
U S Geological Survey
&
U S Census Tiger Files

The preparation of this publication has been financed in part through a grant from the United States Department of Transportation.

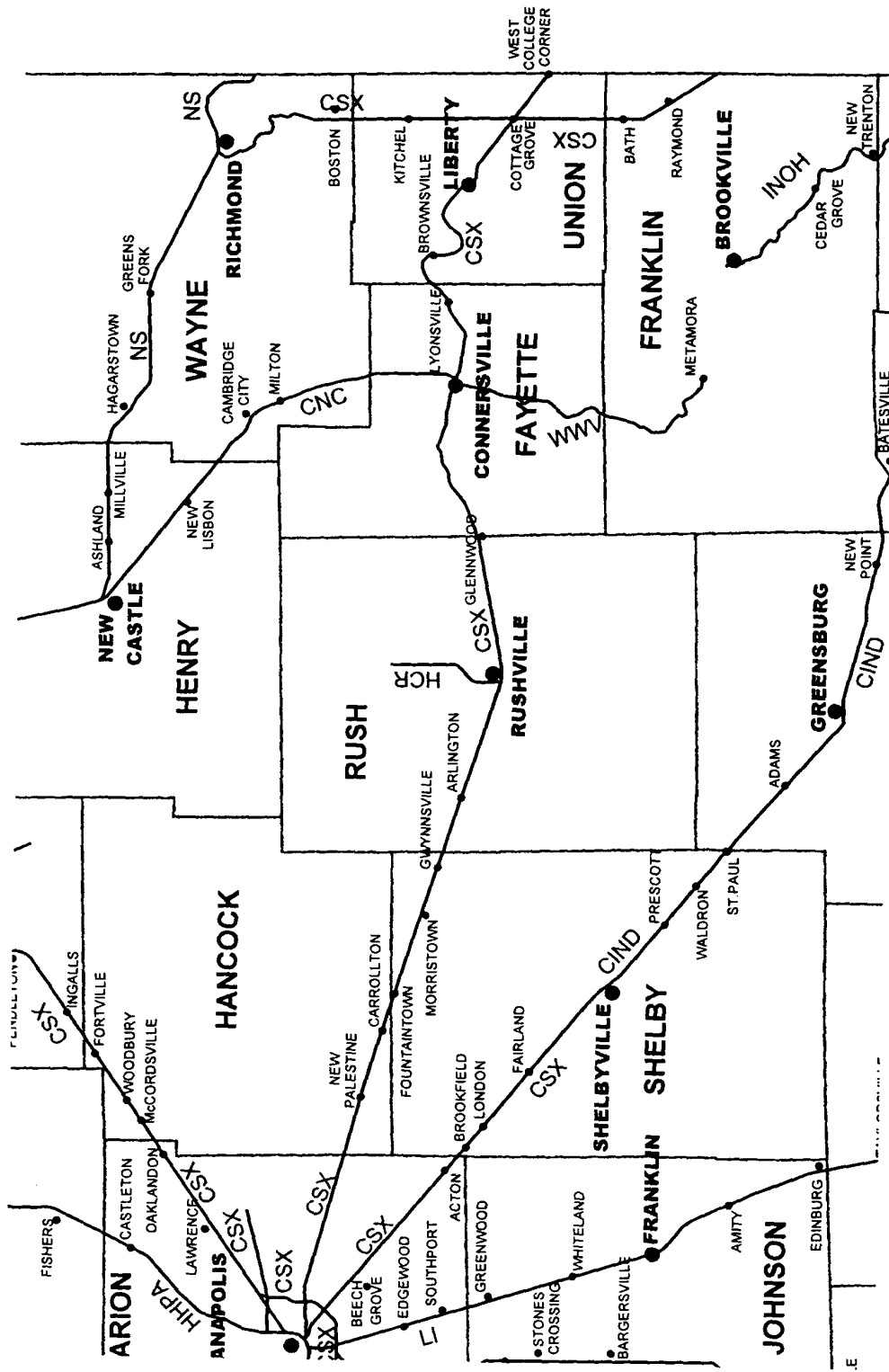


EXHIBIT 14

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Attorney at Law

A Professional Corporation

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Pittsburgh, PA 15219

(412) 471-1800

(412) 471-4477 FAX


851 Twelfth Street

Oakmont, PA 15139

LEGAL MEMORANDUM

TO: Spencer N. Wendelin

CC: Pete Bell

FROM: Richard R. Wilson, Esq. 

DATE: October 12, 2005

RE: Whitewater Valley Railroad – FRA Jurisdiction

A. BACKGROUND

Whitewater Valley Railroad Company ("WWVR") was formed as a nonprofit corporation in 1972 and began weekend passenger operations in 1974 on 25 miles of leased Penn Central track between Connersville and Brookville, Indiana. After a substantial washout closed the track between Metamora and Brookville in 1974, Penn Central removed four miles of track in 1976. The remaining 18 miles of the line from Connersville through Metamora were formally purchased by the WWVR in 1983 followed later, in 1989 with an additional mile of track in Connersville. Operations have always been provided internally by volunteers, supplemented by a paid office manager. Track upgrading has been assisted by matching state grants, totaling over \$1 million since 1994. The railroad operates historically significant diesel locomotives and open window coaches on a regular schedule from Connersville to Metamora. Another WVR train comprised of a locomotive and one or two coaches operates as the Metamora Shuttle, carrying passengers further south on a two mile excursion along the restored canal, past the canal boat, a working aqueduct, and a restored lock.

Based on the documentation you have provided to us, WWVR purchased the one mile line segment from Indiana Hi-Rail Corp. ("IHRC") in 1989. By agreement dated February 8, 1990 between IHRC and WVR, IHRC gave WWVR a switching allowance of \$150 for each revenue car handled by WWVR to or from Cohen Brothers Metals. WWVR and IHRC also agreed to the designation of an interchange track and other administrative requirements. WWVR agreed to pick up cars spotted on that track for delivery to Cohen Brothers¹. The agreement provides that WWVR will maintain the interchange track in accordance with FRA track

¹ For purposes of this letter, I assume Cohen Bros. is located between MP 67.9 and MP 69.0. If it is located on the original 18 mile segment, this section of the line and Cohen Bros. entitlement to rail service would be subject to whatever terms pertained to the WWVR 1983 purchase transaction.

standards and would maintain appropriate levels of insurance. Paragraph 19 indicates that the agreement can be cancelled by either party on 60 days written notice. Based on these documents, it is evident that at least as of 1990, WWVR had entered into an agreement with IHRC, as a private contractor, to provide switching service on behalf of IHRC to Cohen Bros. Since WWVR did not hold itself out to the public to provide freight rail transportation service but only contracted to provide this service as an agent for IHRC, WWVR, was not a railroad common carrier, but rather was a private carrier.

On June 17, 1990 IHRC and WWVR entered into a switching agreement. This switching agreement apparently replaced the February 8, 1990 agreement and provided significant and additional administrative provisions and other details specifying the respective obligations of IHRC and WWVR. Under this new switching agreement WWVR deleted any reference to Cohen Brothers and simply held itself out to provide origin and destination terminal switching on behalf of IHRC for any and all shipment delivered to or from CSXT at Connersville, Indiana for \$150 per car and for shipments delivered to or from NS from New Castle, Indiana for \$50 per car. In addition, the agreement called for WWVR to comply with FRA track and safety requirements and adopted various AAR and other industry standards for application to this service. Under Paragraph 10, IHRC reserved the right to assess demurrage charges against Cohen Bros. or any other shippers served by IHRC under this agreement. Thus by virtue of the June 17, 1990 switching agreement, WWVR gives the appearance of being a common carrier switch railroad, although the switching agreement itself does not so state.

On June 2, 1993, IHRC and WWVR entered into a trackage rights agreement whereby WWVR granted IHRC the right to operate in both directions over WWVR's rail line between M.P. 0 at Connersville, Indiana and M.P. 67.8 on the WWVR line so as to directly serve Cohen Bros. Metal located on the WWVR rail line. Amendment No. 1 to the 1993 trackage rights agreement extended the term of the agreement through December 31, 1997. This trackage rights agreement was assigned by the bankruptcy trustee for IHRC to C&NC and its designees on December 8, 1997.

Neither the sale by IHRC of this line segment to WWVR or WWVR's operation of this line under the switching agreement required STB approval because the track was exempt under 49 U.S.C. §10907. Nonetheless, the rail service being provided by IHRC under the switching agreement where it paid WWVR an allowance and retained rights to assess demurrage to Cohen Bros. was clearly common carrier service. This status is further confirmed by WWVR's grant of trackage rights to IHRC in 1995 which gave IHRC the right to provide common carrier service directly to Cohen Bros.

You have advised that Cohen Bros. now has an interest in receiving rail service and that WWVR is reluctant to participate in such service due to fear of subjecting itself to FRA jurisdiction.

B. FRA TOURIST RAILROAD JURISDICITON

FRA jurisdiction over tourist railroad carriers is set out in the FRA policy statement of February 2002 and at 49 C.F.R. 209, Appendix A which are attached as Exhibits A and B. These documents indicate that the FRA will exercise jurisdiction over all tourist operations, whether or

not they operate over a general system railroad, except for those that are (1) less than 24 inches in gauge and/or (2) are “insular”. WWVR operates on standard gauge track so the only exception to which it could be subject is the one for insularity. The FRA considers a rail operation “insular” if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public, except a business guest, licensee of the tourist operation or an affiliated entity could be affected by the operation. An operation will not be considered “insular” if one or more of the following factors exist with respect to the tourist line: (1) a public highway-rail crossing which is in active use, (2) an at grade rail crossing that is in active use; (3) a bridge over a public road or waters that is in active use or (4) the line in involved in a common corridor with a freight railroad. While I am unfamiliar with all of the physical characteristics of the WWVR line, my review of a map of the rail line indicates that there are multiple public highway crossings so WWVR’s operations are not “insular”.

For tourist railroads that are not insular and which do not operate on a general system railroad, only the regulations and statutory provisions set forth on Page 2 of the FRA policy statement apply. These include provisions of the Safety Appliance Act and the Locomotive Inspection Act, federal signaling laws, hazardous materials regulations, and accident/incident reporting regulations, hours of service restrictions, crossing signal system safety regulations and administrative provisions of rail safety statutes. They are not subject to track safety standards or drug testing and are not required to comply with passenger equipment safety rules or passenger train emergency preparedness. (Tourist railroads that operate on a general system line must comply with all statutes and other regulations unless or until an appropriate waiver has been applied for and granted.) Notwithstanding these limitations, the FRA’s emergency order authority permits it to address true safety emergencies arising from any condition and FRA can inspect any tourist operation and take emergency action if those operations pose an imminent threat of death or injury. Thus, WWVR is subject to some but not all FRA safety regulations.

C. C&NC’s COMMON CARRIER RIGHTS

When IHRC sold the line and trackage between MP 69.0 and MP 67.9 in Fayette County, Indiana to WWVR it did not obtain prior ICC abandonment authorization for that section of track. Moreover, WWVR did not obtain ICC acquisition authority for the track and common carrier authorization to provide rail service on that track. By virtue of the private switching agreement, IHRC maintained its common carrier obligation to provide rail service to shippers along this track segment using WWVR as a private subcontractor. Moreover, as of June 2, 1993 through December 1997 IHRC by virtue of its trackage rights agreement with WWVR extended its own common carrier operations over WWVR track and assumed direct switching services to Cohen Bros. Thus, when C&NC acquired IHRC’s common carrier rail facilities and franchise through the bankruptcy court, it obtained IHRC’s right to provide common carrier rail service by virtue of the WWVR trackage rights agreement over MP. 69 to MP. 67.9.

Finally, although the trackage rights agreement between IHRC (now C&NC) and WWVR has by its own terms expired, C&NC has never abandoned its right to provide common carrier rail service via that trackage agreement. If WWVR does not wish to reinstate the trackage agreement, it will be required to obtain STB authorization to provide common carrier rail service itself or enter into a switching agreement under which it provides private switching service on behalf of C&NC. Since C&NC as a successor in interest to IHRC has not abandoned its

common carrier obligation to provide rail service to Cohen Bros. over the WWVR track it continues to have the legal right to provide such service and if necessary it could assert an implied easement for such purposes over WWVR in the absence of some alternative switching agreement or reinstated trackage agreement.

If a shipper located along this line segment requests service, C&NC has a statutory obligation to provide this service notwithstanding WWVR's ownership of the line segment. That service can be provided directly by C&NC over an implied easement or by WWVR under contract with C&NC. If C&NC provides this service, under FRA regulations, the portion of the track extending from C&NC's right of way to the shipper facility must comply with FRA track safety regulations. At 49 C.F.R. Part 209, Appendix A, the FRA acknowledges that tourist railroad operations are not inherently part of the general rail transportation system and, unless operated over the lines of the general system carrier, tourist lines are not fully subject to FRA regulations. In cases where a railroad that is part of the general rail transportation system operates over the tracks of an entity that is not part of that system, all of the general system carriers' activities are covered by FRA regulations during that period. However, the non general system carrier does not get swept into the general system by virtue of the general system carriers' activities except to the extent that the nongeneral system carrier is liable, as the track owner, for the compliance of its track with FRA track standards over which the general system carrier operates during its incursion onto the nongeneral system track.

D. CONCLUSION

Based on the foregoing analysis, it is my conclusion that C&NC retains the statutory common carrier obligation to provide common carrier rail service to any shipper which is located between MP. 69.0 and MP. 67.9 irrespective of WWVR's ownership of that track. Moreover, by virtue of any use of those tracks by C&NC for common carrier rail freight service, those tracks become subject to and must be maintained by their owner in accordance with FRA track safety regulations. However, C&NC's common carrier freight operations on those tracks do not subject WWVR to any additional FRA rail safety jurisdiction beyond that which already exists by virtue of the FRA's February 2002 statement regarding jurisdiction over tourist railroad carriers.

Accordingly, C&NC is legally obligated to respond to shippers along the line segment requesting freight rail service and WWVR is obligated as the owner of the track to comply with FRA track safety specifications so that C&NC can safely provide the requested common carrier service. C&NC has two choices: it can use WWVR to switch the traffic to the shipper or C&NC can provide the rail service itself over WWVR's tracks. If C&NC provides this service, WWVR's track segment must be maintained per FRA regulations. If WWVR provides the service under contract to C&NC, it is subject to FRA jurisdiction which presently exists for its tourist operations and could be subject to complete FRA jurisdiction if it were deemed to be holding itself out to provide common carrier freight service to the public. Thus, if WWVR wishes to limit its exposure to FRA jurisdiction, its best option is grant C&NC trackage rights to serve Cohen Bros. directly.

EXHIBIT 15

Amendment No. 1 to Trackage Rights Agreement dated June 2, 1993.

IN WITNESS WHEREOF, the parties hereto amend this Agreement between IHRC and WVRR as follows:

5. TERM

The term of this Agreement will be extended through December 31, 1997.

Whitewater Valley Railroad

By: Maurice E. Newberry

Title: PRESIDENT

Date: DECEMBER 29, 1995

Indiana Hi-Rail Corporation

By: Timothy A. Y...

Title: AVP

Date: December 29, 1995

EXHIBIT 16

FROM : HUDSON INDUSTRIES
10/09/2005 12:19

/bbs:74552

FAX NO. : 765-641-0279
WVRROct. 09 2005 06:16PM P4
PAGE 32**TRACKAGE RIGHTS AGREEMENT**

THIS AGREEMENT is made and entered into this 1st day of October, 2005, by and between C&NC Railroad Corporation, an Indiana Corporation (hereinafter "CNUR"), and WHITEWATER VALLEY RAILROAD, an Indiana Corporation (hereinafter "WVRR").

WITNESSETH

WHEREAS, WVRR is the owner of a line of railroad at or near Connersville, Indiana running from CNUR M.P. 0 = WVRR M.P. 69 to WVRR M.P. 67.7 +/- (hereinafter the "Rail Line"); and

WHEREAS, CNUR has the continuing common carrier responsibility to provide rail freight operations to and over the Rail Line and CNUR wishes to further memorialize its service through a grant of trackage rights from WVRR;

NOW, THEREFORE, in consideration of the premises, the mutual covenants, and the other good and valuable considerations set forth herein, CNUR and WVRR agree as follows:

1. GRANT OF TRACKAGE RIGHTS

WVRR hereby grants to CNUR local service trackage rights, including the right to operate in both directions over WVRR's Rail Line between Milepost 0 (CNUR M.P. 0 = WVRR M.P. 69 +/-) at the connection with CNUR's railroad at or near Connersville, Indiana and WVRR Milepost 67.7 +/- (a distance of approximately 1.3 +/- miles) on WVRR's Rail Line at or near Connersville, Indiana together with access to all connecting or diverging tracks. These rights include, but are not limited to the right to directly serve Integrity Metals located on or served off of the Rail Line.

2. USE OF THE RAIL LINE

(a) WVRR shall be responsible for inspection and maintenance requirements of the Rail Line to the minimum safety requirements. CNUR shall be responsible for repairs due to damages caused by CNUR.

(b) Should at any time during the term of this Agreement, the Rail Line become unfit or unsafe for operations, responsibility for repairs and restoration of service shall lie with WVRR unless such disability shall be the direct result of damages which were directly caused by CNUR.

3. COMPENSATION

(a) CNUR shall compensate WVRR at a base rate of \$1500 (one thousand five hundred dollars) for each twelve month period during which this agreement shall

FROM : HUDSON INDUSTRIES

FAX NO. : 765-641-0279

Oct. 09 2005 06:16PM P5

remain in effect to be paid in two semi-annual \$750 (seven hundred fifty dollars) payments payable on the 10th day of the first and seventh months of each 12 month period, plus \$10 (ten dollars) per revenue carload handled over the trackage, to be paid quarterly by the 16th day of the month following the end of each quarter measured from the Effective Date of this Agreement.

(b) In the event of CNUR applies for abandonment of its Connersville operation during the term of this Agreement, CNUR shall grant WVRR right of first refusal to purchase such track and real estate as may be reasonably required to allow a connection to CSXT at Connersville, Indiana at the then current appraisal value for such land, track, and related appurtenances and improvements.

4. OPERATING COMPLIANCE

CNUR shall be solely responsible for its operations over the Rail Line and shall conduct said operations in compliance with all applicable Federal, State, or Local rules, regulations, and ordinances. If any failure by CNUR to comply with such ordinances, rules, and regulations, regarding train operations, results in any fine, penalty, cost, or charge being assessed, imposed or charged against WVRR, then CNUR will reimburse and indemnify WVRR for or on account of such fine, penalty, cost, or charge.

CNUR will endeavor to provide freight service on and over the Rail Line in such a manner as to not unduly interfere with the tourist train operations of WVRR. As part of that effort, CNUR shall notify WVRR of any train movement on Saturdays or Sundays, or on any other days upon which CNUR has received 24 hours minimum advance notice of WVRR's intent to operate its own trains or equipment on the Rail Line.

5. TERM

The term of this Agreement shall be for twelve (12) months beginning October 1, 2005 (the "Effective Date"), and shall automatically extend for like periods upon each anniversary of the Effective Date, unless or until amended by a mutually executed writing, or unless or until one party shall notify the other via 120 days advance written notice of its intent to not to renew at said anniversary. Termination of this Agreement shall not release either party hereto from any liability or obligation that may have been incurred by or that may have accrued against it hereunder during the term hereof, nor shall it in any way effect CNUR's common carrier responsibility or authority.

6. NOTICE

All written communications between the parties concerning this Agreement should be addressed as follows:

FROM : HUDSON INDUSTRIES

FAX NO. : 765-641-8279

Oct. 09 2005 06:17PM P6

To CNUR: C&NC Railroad Corporation
205 N. Capitol Ave. Suite A
Corydon, IN 47112

With Copy To: C&NC Railroad Corporation
4301 N. Western Avenue
Connersville, IN 47331

To WVRR: Whitewater Valley Railroad
255 Eastern Avenue
P. O. Box 406
Connersville, IN 47331

7. LIABILITY

Each party shall be responsible for the acts or omissions of its officers, agents, employees, lessors, subsidiaries, affiliates, successors, and assigns in regard to any and all liabilities arising under this Agreement. Whenever any loss of, damage to, or destruction of property, or injury to or death of any person or persons resulting from, arising out of, incidental to, or occurring in connection with this Agreement involves only trains, locomotives, cars, or equipment operated by or in the possession of CNUR, CNUR will assume all liability therefrom and bear all cost and expense in connection therewith, including all cost, expense, and liability, and will forever protect, defend, indemnify, and save harmless WVRR and its officers, agents, employees, lessors, subsidiaries, affiliates, successors, and assigns from and against any such liability, cost, and expense.

Whenever any loss of, damage to, or destruction of property, or injury to or death of any person or persons resulting from, arising out of, incidental to, or occurring in connection with this Agreement involves only trains, locomotives, cars, or equipment operated by or in the possession of WVRR, WVRR will assume all liability therefrom and bear all cost and expense in connection therewith, including all cost, expense, and liability, and will forever protect, defend, indemnify, and save harmless CNUR and its officers, agents, employees, lessors, subsidiaries, affiliates, successors, and assigns from and against any such liability, cost, and expense.

Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whatsoever, occurs with the trains, locomotives, cars or equipment of or in the account of, both WVRR and CNUR being involved, WVRR and CNUR shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including without limitation loading), and equipment operated by each of them and for injury to and death of their officers, and all liability, cost, and expense for injury to and death of any other person or persons whatsoever, and for loss of, damage to, and destruction of all other property (including without limitation the Trackage) so occurring, shall be borne equally by WVRR and CNUR. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever

FROM : HUDSON INDUSTRIES

FAX NO. : 765-641-8279

Oct. 09 2005 06:18PM P7

protect, defend, indemnify, and save harmless the other party to this Agreement and its officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its officers, agents or employees.

8. INSURANCE

CNUR will procure and maintain in effect during the term of this Agreement a policy or policies of insurance covering the liability to which CNUR is or may be subject under this Agreement for operating on the trackage of WVRR. Such insurance will provide minimum limits of Five Million Dollars (\$5,000,000.00) per occurrence. Upon request, CNUR shall provide WVRR a certificate of insurance providing proof that the insurance required under this item is in full force and effect during the term of this Agreement.

9. ASSIGNMENT AND SOLE BENEFIT

This Agreement may be assigned by CNUR, upon the prior written notification to WVRR, to any successor in interest to CNUR's common carrier responsibility and authority. This Agreement will be binding upon and inure to the benefit of successors and assigns of each of the parties hereto.

10. NON-WAIVER

At any time during the term of this Agreement, either party may waive any default of the other party under this Agreement without affecting or impairing any right arising from any other default under this Agreement.

11. AMENDMENT

This Agreement may be modified only by an instrument in writing, signed by an authorized and empowered officer of WVRR and of CNUR.

12. FORCE MAJEURE

In the event either party shall be prevented from performance of this Agreement due to reasons wholly beyond its control such as, but not limited to, war, riot, civil insurrection, act of terrorism, strike, lockouts, explosion, fire or Acts of God, then the non performance on the part of the affected party shall not constitute a breach of this Agreement. However, the party claiming and effected by such Force Majeure event will:

(a) As soon as practical, notify the other party of the occurrence of the event and the extent and nature of this disability it caused, and;

FROM : HUDSON INDUSTRIES

FAX NO. : 765-641-0279

Oct. 09 2005 06:18PM PG

(b) As soon as economically and physically practicable shall cure the disability caused by the event.

13. CAPTIONS

The captions of the articles herein are inserted for convenience only and shall in no way expand, restrict, or modify the terms and provisions of any clause hereof.

14. GOVERNING LAW

This Agreement shall be construed and enforced under the laws of the State of Indiana.

15. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed as an original instrument, but all counterparts together shall constitute but one Agreement.

16. HEADINGS

The section and paragraph headings used herein have been inserted solely for the convenience of reference and they shall have no weight in the interpretation of this Agreement.

17. DRAFTING

This Agreement is being entered into by competent persons, who are experienced in business and have adequate access to legal counsel. Therefore, the language of this Agreement is not and shall not be construed against any particular party as the drafter of such language, terms or provisions.

18. TIME

Time shall be of the essence of this Agreement.

FROM : HUDSON INDUSTRIES

FAX NO. : 765-641-0279

Oct. 09 2005 06:18PM PG

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

C&NC Railroad Corporation

By _____

Title _____

Whitewater Valley Railroad

By _____

Title _____

EXHIBIT 17

Richard R. Wilson, P.C.
Attorney at Law
A Professional Corporation
127 Lexington Avenue, Suite 100
Altoona, PA 16601

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888-454-3817 (Toll Free)
(814) 944-6978 (FAX)
rrwilson@atlanticbbn.net

Of counsel to:
Vuono & Gray, LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

October 20, 2005

Karyn A. Booth, Esq.
Thompson Hine, LLP
1920 N Street, N.W.
Washington, DC 20036-1600

Re: C&NC Use of Whitewater Valley Railroad Track in Connersville, IN

Dear Ms. Booth:

Thank you for your letter of October 18, 2005. Notwithstanding the respective positions of our clients regarding C&NC's right to provide common carrier rail service to Integrity Metals, to settle this matter, we are willing to work with WVRR in the following fashion to limit WVRR's exposure to FRA safety regulation. As we indicated in our previous correspondence, if WVRR were to provide freight service to Integrity Metals via interchange of freight cars with C&NC at Connersville, Indiana, it would be subject not only to FRA track safety standards, but also to crew, equipment, and other FRA safety regulations. Moreover, WVRR is not currently authorized by the Surface Transportation Board to provide rail freight service and it is our understanding that it does not wish to do so. Accordingly, if an agreement could be reached whereby C&NC provides freight service to Integrity Metals by means of a trackage agreement over the portion of the WVRR line necessary to reach Integrity Metals, C&NC is prepared to undertake the following steps:

1. We would enter into a trackage agreement with WVRR by which your client would receive compensation toward the track maintenance of this portion of the line commensurate with C&NC's use of the line for freight service. The C&NC proposed trackage right agreement provided to your client with our letter of October 6 already includes such a proposal.

2. C&NC would assist WVRR and assume the reasonable cost of filing a waiver with FRA for any additional FRA regulation beyond that to which WVRR is presently subject as a non-insular tourist railroad. Informal contact with FRA counsel suggests that a situation such as this would be an appropriate one for an FRA waiver. Our counsel has advised that his assistance in connection with such a waiver application would be undertaken at a cost of \$1500 which C&NC would either incur or provide reimbursement to WVRR, assuming the waiver is filed on a timely basis.

Karyn Booth, Esq.
October 20, 2005
Page 2

3. C&NC would assume the cost of the repair of the red tag switch into the Integrity Metals siding and inspect WVRR track to ensure that it is safe to operate freight service to Integrity Metals.

4. Under the proposed trackage rights agreement, C&NC would indemnify, defend and hold WVRR harmless with respect to any injuries, deaths or property damage arising from or related to its freight operations on the WVRR rail line.

We hope these measures address the major concerns which have created a reluctance on the part of your client to renew C&NC trackage rights over the WVRR line to serve Integrity Metals.

Thank you for your prompt consideration of this proposal. Time is of the essence.

Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson, Esq.

RRW/bab